

CLERK'S COPY.

Vol. I
TRANSCRIPT OF RECORD
(Pages 1 to 171)

Supreme Court of the United States

OCTOBER TERM, 1946

No. 306

J. E. MASON, PETITIONER,

PARADISE IRRIGATION DISTRICT

ON PETITION FOR WRIT OF HABEAS CORPUS TO THE UNITED STATES SUPREME COURT
ON APPEAL FROM THE NINTH CIRCUIT

PRINTED BY THE UNITED STATES GOVERNMENT

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1946

**TRANSCRIPT OF RECORD
IN TWO VOLUMES**

IN THE

Supreme Court of the United States

October Term, 1945

No. 3

J. R. MASON,

Petitioner,

vs.

PARADISE IRRIGATION DISTRICT,

Respondent.

VOLUME I

Pages 1 to 171

**UPON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 9925

United States
Circuit Court of Appeals

For the Ninth Circuit.

J. R. MASON,

Appellant,

vs.

PARADISE IRRIGATION DISTRICT,

Appellee.

Transcript of Record

**Upon Appeal from the District Court of the United
States for the Northern District of California,
Northern Division.**

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Answer of J. R. Mason	18
Appeal:	
Designation of Contents of Record on (Circuit Court of Appeals)	168
Designation of Additional Portions of Rec- ord on (Circuit Court of Appeals)	171
Designation of Contents of Record on (District Court)	61
Designation of Additional Portions of Rec- ord on (District Court)	62
Notice of	54
Statement of Points on (Circuit Court of Appeals)	169
Statement of Points on (District Court) ..	55
Attorneys of Record, Names and Addresses of	1
Certificate of Clerk U. S. District Court to Record on Appeal	167
Conclusions of Law	39
Decree, Interlocutory	44
Designation of Contents of Record on Appeal (Circuit Court of Appeals)	168

Index	Page
Designation of Additional Portions in Record on Appeal (Circuit Court of Appeals)	171
Designation of Contents of Record on Appeal (District Court)	61
Designation of Additional Portions in Record on Appeal (District Court)	62
Findings of Fact and Conclusions of Law	26
Narrative Statement of Evidence (See "Testi- mony")	64
Notice of Appeal	54
Notice of Entry of Judgment	53
Orders Extending Time to Docket Appeal	64
Petition for Confirmation of Composition	1
Proof of Claim of J. R. Mason	25
Statement of Points on Appeal (Circuit Court of Appeals)	169
Statement of Points on Appeal and Assignment of Errors (District Court)	55
Testimony	64
Exhibits for petitioner:	
1—Application for loan made to Re- construction Finance Corporation by Paradise Irrigation District dated December 18, 1933	66
2—Resolution of Reconstruction Fi- nance Corporation adopted May 22, 1934 granting a loan to the district	74

Index**Page****Exhibits for petitioner (cont.):**

- 3a—Resolution of the board of directors of the district adopted June 12, 1934 accepting the loan from Reconstruction Finance Corporation 78
- 3i—Resolution of the board of directors of the district adopted December 12, 1934 that the district enter into a contract with the Reconstruction Finance Corporation..... 81
- 7—Letter from the Bondholders Protective Committee to its members recommending acceptance of plan 100
- 8—Extracts from the official minute book of the board of directors of Paradise Irrigation District, etc..... 109
- 10—Letter dated June 5, 1936 written by H. W. Clewett to Emil Schram 138
- 11—Letter dated March 13, 1935 from H. A. Mulligan, Treasurer of the R. F. C. to the Federal Reserve Bank of San Francisco..... 141

Exhibits for respondent:

- 1—Notice sent by the Bondholders Protective Committee dated July 2, 1934 to depositing bondholders 101

Index	Page
Exhibits for respondent (cont.):	
2—Letter from George Stevens of the Bondholders Protective Committee to the members of committee dated March 31, 1934.....	104
3—Letter dated July 1, 1934 to bondholders of Paradise Irrigation District from the district	83
4—Judgment of dismissal in case No. 6648 in the District Court of the United States for the Northern District of California, Northern Division	88
5—Petition for writ of mandamus, points and authorities and alternative writ of mandamus in the case of Mason, et al. vs. Paradise Irrigation District et al. in the Superior Court of Stanislaus County	143
10—Letter dated April 30, 1938 to Paradise Irrigation District from Reconstruction Finance Corporation	149
14—Letter dated July 7, 1936 from J. B. Thompson to Frank J. Keenan	150
16—Letter dated January 15, 1937 from Paradise Irrigation District to Frank J. Keenan.....	151

Paradise Irrigation Dist.

Index	Page
Exhibits for respondent (cont.):	
17—Letter dated February 25, 1937 to J. M. Ossmer from H. A. Mulligan	152
21—Letter dated September 1, 1937 to Reconstruction Finance Corpora- tion from J. B. Thompson	154
A—(For identification) Letter dated November 18, 1936 to Coburn Cook from Paradise Irrigation District	156
23—Proof of claim of J. R. Mason	160
24—Escrow letter September 7, 1933 to Pacific National Bank of San Francisco from J. R. Mason	163
25—Letter dated January 13, 1934 to J. R. Mason from George Stephens	164
Stipulation re Narrative Statement of Evi- dence	165
Witnesses for petitioner:	
Clewett, Howard S.	
—direct	97
—recalled, direct	138
—cross	142
—recalled, direct	165
Fisher, Levi P.	
—direct	137
Hamma, Irvin G.	
—direct	107
McCarthy, Newcomb C.	
—direct	136

Index	Page
Witnesses for petitioner, (cont.):	
Noble, Harry B.	
—direct	108
Shier, Edward P.	
—direct	101
Thompson, James B.	
—direct	93
—recalled, direct	143
Witnesses for respondent:	
Clewett, Howard S.	
—direct	158
—cross	159
Mason, James R.	
—direct	159
Thompson, James B.	
—direct	145
—cross	158

Attorney for Appellant:

W. COBURN COOK, Esq.,

Berg Bldg.,

Turlock, Calif.

Attorney for Appellee:

JEROME D. PETERS, Esq.,

304 Broadway,

Chico, Calif.

In the District Court of the United States for the
Northern District of the State of California

In the Matter of PARADISE IRRIGATION
DISTRICT

PETITION FOR CONFIRMATION OF COM-
POSITION OR DEBT READJUSTMENT

To the Honorable, Judge of the District
Court of the United States in and for the
Above-named District:

Paradise Irrigation District, hereinafter styled
the Petitioner, shows unto Your Honor that it is
an Irrigation District, created and existing under
the laws of the State of California for the purpose
of constructing, improving, maintaining and oper-
ating certain improvements and projects devoted
chiefly to the improvement and irrigation of the
lands therein for agricultural purposes; and the
major part thereof is located in Butte County and
is within the jurisdiction of this Court. That it is

entitled to the relief offered by Chapter X of the National Bankruptcy Laws of the United States, as amended by Public No. 302, of the Seventy-fifth Congress, and approved August 16, 1937, and this petition is filed pursuant to the provisions thereof.

That on account of the adverse agricultural conditions and general depression which prevailed during the greater part of the past seven years, the market value of farm products produced [1*] within Petitioner was generally less than the cost of production; that farming operations therein have been unprofitable; and the installments of taxes and tax obligations levied upon the real property within Petitioner and falling due in such period were greater than the ability of the lands to produce, or the owners to pay. That, by reason of the inability of Petitioner to collect sufficient taxes to meet its obligations, it has been and now is insolvent and unable to meet its debts as they have matured or will mature, making it imperative that it effect a composition and readjustment of its debts pursuant to the above-mentioned Act.

That a plan for composition and readjustment of the debts of the Petitioner is filed and submitted with this petition and is hereto attached, marked Exhibit A, and made a part hereof.

That creditors owning not less than 92 per cent in amount of the bonds and other evidences of indebtedness of Petitioner and affected by the plan of composition and debt readjustment proposed herein,

*Page numbering appearing at foot of page of original certified Transcript of Record.

have accepted such plan in writing and consented to the filing of this petition, which acceptance and consent is hereto attached, marked Exhibit B, and made a part hereof.

That a list of all known creditors of Petitioner, together with their addresses, so far as known to Petitioner, and a description of their respective claims, showing separately those who have accepted the plan of composition herein mentioned, together with their separate addresses, is hereto attached, marked Exhibit C, and made a part hereof. That Petitioner, by filing the list of creditors, does not admit the validity of their claims. That all claims are payable from taxes levied against the lands within Petitioner and are of a single class.

That the Reconstruction Finance Corporation, an agency of the United States of America, has authorized a loan to [2] Petitioner in the sum of not to exceed \$252,500.00 to enable it to fully effect the plan of composition and debt readjustment as set forth in Exhibit A, hereto attached.

That the plan of composition and debt readjustment proposed herein contemplates paying and the Petitioner should be permitted to pay, the reasonable cost of maintaining and operating its system of irrigation (state kind) improvements during the pendency of this proceeding, together with the necessary court costs and a reasonable fee to counsel representing Petitioner, the amount thereof to be determined by the Court.

Wherefore, Petitioner Prays:

(a) That the Court enter an order herein approving the petition and the filing thereof, and directing that notice of these proceedings be given to creditors as required by the Act; and

(b) That an order be entered enjoining and restraining the institution or prosecution of any suit against Petitioner or any officer or inhabitant thereof on account of any securities affected by the plan or the enforcement of any lien, the levy of any tax or assessment, or the levying of any execution against the property of Petitioner during the pendency of this proceeding; and

(c) That, upon the completion of the hearing of the plan, an Interlocutory Decree be entered, approving the plan and putting it into effect; and

(d) That, upon completion of the plan of composition and debt readjustment, a final decree be entered discharging Petitioner from all debts and liabilities, in accordance with the plan; and

(e) That the Court grant such further orders, decrees and relief in the premises as may be deemed just and equitable.

PARADISE IRRIGATION

DISTRICT

By L. P. FISHER

President

Attest:

J. B. THOMPSON

Secretary [3]

State of California,
County of Butte—ss.

L. P. Fisher, being first duly sworn, on his oath states that he is the duly elected, qualified and acting President of the Board of Directors of the Paradise Irrigation District, and that he has been duly and regularly authorized by resolution adopted by the Board of Directors of said District to prepare, execute and verify the foregoing petition; that he has read the said petition and knows the contents thereof and that the matter and things therein stated are true of his own knowledge.

L. P. FISHER

Subscribed and sworn to before me this 4th day
of November, 1937.

My commission expires August 1st, 1940.

[N. P. Seal] HELEN R. HAMBURGER,
Notary Public. [4]

EXHIBIT A

RESOLUTION OF THE BOARD OF DIRECTORS OF PARADISE IRRIGATION DISTRICT AUTHORIZING AND DIRECTING CERTAIN OF ITS OFFICERS AND REPRESENTATIVES TO INSTITUTE AND PROSECUTE TO A FINAL DETERMINATION AN ACTION OR PROCEEDING UNDER THE NATIONAL BANKRUPTCY ACT FOR THE PURPOSE OF READJUSTING THE DISTRICT'S OUTSTANDING INDEBTEDNESS.

Whereas, the territory within the Paradise Irrigation District, located at and near Paradise, in Butte County, California, (hereinafter called "district"), consists of agricultural lands and used principally for agricultural purposes, and the district has completed and operates an irrigation system consisting of a storage reservoir, ditches and pipe lines, designed for the purpose of irrigating the lands situated therein, the cost of which was paid for out of the proceeds received from the sale of bonds issued and sold by the district for such purpose; and

Whereas, due to the general depression and adverse agricultural conditions existing throughout the United States for the last several years, and the consequent low market value of farm products, the production of farm products in this district has been without profit, the value thereof often being

less than the cost of production, with the result that the owners have been and will be unable to pay the district taxes levied upon the lands therein for the purpose of paying the district's indebtedness as and when the installments of principal and interest thereof have matured or will mature; and

Whereas, by reason of such adverse agricultural conditions and accumulated delinquent taxes, the value of the lands in the district has decreased until the lands, for all practical purposes, have become unmarketable; and [5]

Whereas, the district, without success, has made due and diligent effort to collect the taxes so levied by it upon the lands therein whereupon it became apparent that unless the outstanding indebtedness of the district was reduced and refinanced the burden of district taxes upon the lands therein would be greater than the value thereof; and

Whereas, in an effort to relieve such condition, the district applied to and was authorized a loan of not to exceed \$252,500.00 by the Reconstruction Finance Corporation, an agency of the United States Government (hereinafter called "R. F. C."), for the purpose of reducing and refinancing the outstanding indebtedness of the district, consisting of bonds, in the principal amount of \$476,000.00, the first issue dated May 1, 1917, and the second dated July 1, 1920, and bearing interest at the rate of six per centum per annum, payable semiannually; and

Whereas, the basis or ratio for reducing and refinancing such indebtedness was 52.521¢ for each

dollar of the principal amount thereof, exclusive of interest, or a total of \$249,999.96 (the additional \$2,500.04 of the loan to be used, if necessary, in the payment of expenses incident to the refinancing program), which the district determined was fair and equitable to both the holders of its outstanding bonds and to the owners of the lands within the district, and its governing authority has duly adopted a resolution accepting such loan and agreeing to carry out the terms and conditions of the R. F. C. resolution evidencing same, one of which was to the effect that the loan would not be disbursed until the holders of all of the principal amount of the district's outstanding bonds had agreed to make their bonds available for refinancing in accordance with the terms and conditions of such resolution; and

Whereas, the holders of only 92 per centum of the [6] principal amount of the outstanding bonds of the district have been made so available for refinancing, thereby making it impossible for the district to consummate the R. F. C. loan unless the district institutes and prosecutes to final determination an action or proceeding in the District Court of the United States in and for the Northern District of California (hereinafter called "Court"), pursuant to the provisions of Chapter X of the National Bankruptcy Act, approved July 1, 1898, as amended by Public No. 302, Seventy-fifth Congress, approved August 16, 1937, whereby all the district's outstanding indebtedness will be read-

justed and refinanced in accordance with the plan therefor as hereinafter set forth;

Now, Therefore, Be It Resolved, by the Board of Directors of the District that the president and secretary of the Board be and they are hereby authorized and directed to institute and file an action for proceeding in the Court for the composition of its outstanding indebtedness in accordance with the following plan, to wit:

The district proposes a composition of its present outstanding indebtedness by paying the holders thereof, in cash, the sum of 52.521 cents for each dollar of the principal amount of their respective bonds, exclusive of interest; that if any bond be presented with any appurtenant interest coupon maturing on or before July 1, 1934, missing, there shall be deducted from the amount payable thereon 45.67 cents for each dollar of the face amount of such missing coupon, and if any bond be presented with any appurtenant unpaid interest coupon maturing subsequent to July 1, 1934, missing, there shall be deducted from the amount payable thereon a sum equal to the full face amount of such missing coupon. Provided, however, that where deductions are made on account of missing coupons and such missing coupons are afterward presented for payment, the holder thereof shall be paid the sum deducted from the amount payable to the holder of the bond on account of the missing coupon; that such payments will be

made from the proceeds of a loan authorized by the Reconstruction Finance Corporation and which has been or will be disbursed to or for the benefit of the district for the purpose of reducing and refinancing its indebtedness. [7]

To evidence such loan the district further proposes to issue and deliver to the Reconstruction Finance Corporation its new or refunding serial bonds in principal amount equal to the agreed amounts disbursed therefrom for the purposes mentioned, including the cost and expenses not to exceed \$2,500 incurred by the district in connection with its debt readjustment, together with 4% interest on all such disbursements from the date thereof until the new or refunding bonds evidencing same are issued and delivered to the Reconstruction Finance Corporation as authorized by an election held by the district on the 28th day of September, 1934.

The new or refunding serial bonds to be issued and delivered by the district to the Reconstruction Finance Corporation will bear interest from date until paid at the rate of 4% per annum, payable semiannually; the first installment of principal will mature three years after date thereof, and thereafter the remaining installments of principal will mature annually according to a schedule therefor which is acceptable to the Reconstruction Finance Corporation.

Or, in the alternative, the details of the above plan may be reasonably modified in such particulars as the Court deems just and proper, and as may be acceptable to the Reconstruction Finance Corporation and the president and secretary of the district.

Further Resolved, That the president and secretary of the district are jointly and severally further authorized and empowered to do all other things necessary, proper and convenient to carry into effect such plan of debt readjustment or any modification thereof as may be approved by the Court, including the employment of counsel to represent the district in such proceedings.

I, J. B. Thompson, Secretary of the Paradise Irrigation District hereby certify that the above and foregoing is a true and correct copy of resolution duly adopted by the unanimous vote of the Board of Directors of said district at a special meeting duly and regularly called and held September 27, 1937.

J. B. THOMPSON

Secretary [8]

EXHIBIT B

ACCEPTANCE OF PLAN FOR COMPOSITION AND READJUSTMENT OF INDEBTEDNESS OF PARADISE IRRIGATION DISTRICT, PARADISE, CALIFORNIA

Whereas this Corporation has purchased and now holds bonds aggregating in principal amount \$447,000 of Paradise Irrigation District, Paradise, California; and

Whereas the total of said bonds held by this Corporation as purchaser is in an amount exceeding 93% of the bonded indebtedness of said District; and

Whereas said District desires to file a petition in the United States District Court under the provisions of Sections 81, 82 and 83 of an Act of the Congress of the United States entitled "~~An~~ Act to Establish a Uniform System of Bankruptcy throughout the United States", approved July 1, 1898, as amended, in order to effect a plan for composition and readjustment of its outstanding indebtedness; and

Whereas the Board of Directors of said District adopted a plan for composition and readjustment of its outstanding indebtedness on the basis and including the terms and conditions as follows:

The district proposes a composition of its present outstanding indebtedness by paying the holders thereof, in cash, the sum of 52.521 cents for each dollar of the principal amount of their

respective bonds, exclusive of interest; that if any bond be presented with any appurtenant interest coupon maturing on or before July 1, 1934, missing, there shall be deducted from the amount payable thereon 45.67 cents for each dollar of the face amount of such missing coupon, and if any bond be presented with any appurtenant unpaid interest coupon maturing subsequent to July 1, 1934, missing, there shall be deducted from the amount payable thereon a sum equal to the full face amount of such missing coupon. Provided, however, that where deductions are made on account of missing coupons and such missing coupons are afterward presented for payment, the holder thereof shall be paid the sum deducted from the amount payable to the holder of the [9] bond on account of the missing coupon; that such payments will be made from the proceeds of a loan authorized by the Reconstruction Finance Corporation and which has been or will be disbursed to or for the benefit of the district for the purpose of reducing and refinancing its indebtedness.

To evidence such loan the district further proposes to issue and deliver to the Reconstruction Finance Corporation its new or refunding serial bonds in principal amount equal to the agreed amounts disbursed therefrom for the purposes mentioned, including the cost and expenses not to exceed \$2,500 incurred by the district in connection with its debt readjustment, together with 4% interest on all such disburse-

ments from the date thereof until the new or refunding bonds evidencing same are issued and delivered to the Reconstruction Finance Corporation as authorized by an election held by the district on the 28th day of September, 1934.

The new or refunding serial bonds to be issued and delivered by the district to the Reconstruction Finance Corporation will bear interest from date until paid at the rate of 4% per annum, payable semiannually; the first installment of principal will mature three years after date thereof, and thereafter the remaining installments of principal will mature annually according to a schedule therefor which is acceptable to the Reconstruction Finance Corporation.

Or, in the alternative, the details of the above plan may be reasonably modified in such particulars as the Court deems just and proper, and as may be acceptable to the Reconstruction Finance Corporation and the president and secretary of the district.

Whereas such plan for composition and readjustment appears to be fair, just and reasonable, and adopted in good faith on the part of such District, and has been approved by the Division Chief or Acting Chief of the Drainage, Levee and Irrigation Division and Counsel for this Corporation; and

Whereas its adoption by Reconstruction Finance Corporation appears advisable;

Now, Therefore, by reason of the foregoing facts, and on [10] the recommendation of the Division Chief or Acting Chief, such proposed plan for composition and readjustment submitted by the Board of Directors of Paradise Irrigation District, Paradise, California, be and hereby is approved and accepted by Reconstruction Finance Corporation.

And Reconstruction Finance Corporation consents that such District may file its petition for composition and readjustment of its indebtedness in the United States District Court, as provided by the Act of the Congress entitled "An Act to Establish a Uniform System of Bankruptcy throughout the United States", approved July 1, 1898, and Acts amendatory thereto.

In Witness the execution of this acceptance this 28th day of October, 1937.

**RECONSTRUCTION FINANCE
CORPORATION**

By RONALD H. ALLEN /s/
Assistant Secretary [11]

EXHIBIT C

LIST OF CREDITORS AND ADDRESSES

The following is a list of all known creditors of the petitioner, together with their addresses so far as known to petitioner, and a description of their respective claims, and shows separately those who have accepted the plan of composition mentioned

in the foregoing petition, together with their separate addresses:

(1). J. R. Mason, whose address is 1920 Lake Street, San Francisco, California, is the owner of the following bonds of the par value of \$1,000.00, and has not accepted the composition, said bonds being described as follows:

First issue:

Bond Numbers:

170

171

257

258

293

Second issue:

23

24

25

35

36

81

82

94

95

96

97

98

106

107

108

109

110 [12]

(2). Mrs. Eugenia M. Masten, c/o Jack O. Miller, First National Trust and Savings Bank, San Diego, California, also c/o J. R. Mason, 1920 Lake Street, San Francisco, California (Mrs. Eugenia M. Masten is the mother-in-law of the creditor J. R. Mason). Mrs. Eugenia M. Masten is the owner of the following bonds of the par value of \$1,000.00, and has not accepted the composition, said bonds being described as follows:

Second issue:

Bond Numbers:

46

47

(3). James H. Jordan Company, whose address is 200 Loring Block, Riverside, California, is the owner of the following bonds of the par value of \$1,000.00, and has not accepted the composition, said bonds being described as follows:

First issue:

Bond Numbers:

93

94

95

96

97

(4). The Reconstruction Finance Corporation, Washington, D. C., is the owner of all the remaining bonds of petitioner, having a face

value of \$447,000.00, and said Corporation has consented and accepted the plan of composition mentioned in the foregoing petition.

[Endorsed]: Filed Dec. 20, 1937. Walter B. Maling, Clerk. [13]

[Title of District Court and Cause.]

ANSWER OF J. R. MASON

Comes now J. R. Mason, hereinafter referred to as respondent, and for answer to the petition of said Paradise Irrigation District for debt readjustment filed herein, objects to the plan for readjustment of debts proposed in, referred to in, or filed with said petition, and without consenting thereto, admits, denies and alleges as follows:

I.

That said respondent is now and long since prior to the filing of said petition was a creditor of said district, the petitioner herein, to wit: the owner and holder of certain of the unpaid bonds of said district referred to in petitioner's petition herein, and hereinafter more particularly described, together with unpaid interest coupons attached to or originally attached to said bonds, both said bonds and said interest coupons being hereinafter more particularly referred to; that said bonds of said district so owned and held by respondent were and each of them was for valuable consideration sold and issued

for the purpose of constructing or purchasing necessary irrigation canals or works, or acquiring necessary property and right thereof, or for the purpose of acquiring waters, water rights, reservoirs, reservoir sites or other property necessary for the purpose of said distict, or to provide for drainage made necessary by irrigation provided for by said district, or to provide for the construction, acquisition, operation, leasing or control of plants for generation, distribution, sale or lease [14] electrical energy or for a combination of two or more of such purposes, by the terms of each of which the said district promised and agreed to pay to bearer the principal amount thereof on the due date therein named, together with interest at the rate of interest as specified in said coupons, payable semiannually on the 1st day of January and the 1st day of July of each year after the date of said bond until the due date thereof, and that each of said semi-annual interest payments on each of said bonds is represented by a coupon attached or originally attached to said bond to which it relates, by the terms of which said district promised and agreed to pay to bearer on the date therein named the amount of interest represented thereby; that said bonds and interest coupons and respondent are directly and adversely affected by the plan of debt readjustment proposed in said petition.

II.

That said respondent is the owner of bonds of said district as described in its petition herein, in the

aggregate amount of \$29,000, and each of which said bonds have attached thereto or originally had attached thereto interest-bearing coupons, as provided by said issues and which matured semi-annually, as aforesaid, commencing July 1, 1936, to the present time, and have been respectively presented for payment to the treasurer of said district and payment thereof refused.

III.

That the amount which petitioner seeks to have deducted or credited upon the payment to be made herein by reason of the absence of certain coupons from the bonds is an unjust and unfair provision for the reason that all of said coupons referred to have been paid by the district voluntarily and in the ordinary course of business, and the petitioner well knows that they are in the custody of said district or have been destroyed by it or its officers. [15]

IV.

Denies that petitioner is unable to collect sufficient taxes to meet its obligations; denies that it has been and now is insolvent or unable to meet its debts as they have matured or will mature.

V.

Denies that creditors, owning not less than 92% in amount of the bonds and other evidences of debt of the petitioner affected by the plan of composition of debt readjustment have accepted such plan in writing or consented to the filing of the petition, and

referring particularly to Exhibit B attached to the petition, respondent denies that Reconstruction Finance Corporation is a creditor of the district affected by the plan adversely, but alleges that said corporation is beneficially affected by the plan, and further denies that the said corporation has purchased or owns bonds aggregating \$447,000, or any other amount of the said Paradise Irrigation District, and in this connection respondent is informed and believes, and upon such information and belief alleges that heretofore Reconstruction Finance Corporation has loaned to petitioner, and petitioner has borrowed from Reconstruction Finance Corporation, the sum of approximately \$225,000, with which said district has paid bonds of petitioner in the aggregate principal amount of \$447,000, and that the total debt obligation of petitioner at the present time consists of said loan from Reconstruction Finance Corporation, plus the bonds owned by respondent.

VI.

Denies that the list of creditors of petitioner, set forth as Exhibit C, is inaccurate and incorrect.

VII.

Denies that the claims of creditors of petitioner are of a single class. [16]

VIII.

Alleges that said plan of readjustment is not fair, equitable, nor for the best interests of the creditors

of the district. Furthermore, the offer of the plan is not made in good faith.

IX.

Said plan is not fair because other bondholders having bonds against the same geographical area are not required to scale down their debts, and because mortgage holders and deed of trust holders are not required to scale down their debts, such mortgage holders and deed of trust holders holding mortgages upon lands within the geographical area of the petitioner; because the payment of assessments is but a small fraction of the annual costs of the landowners in the production and marketing of farm commodities from their lands; because farming conditions as to costs of production and marketing and prices of farm commodities are now fairly stable; and because the debt of said district has been substantially reduced by the loan made by the Reconstruction Finance Corporation.

X.

Alleges that this court is, without jurisdiction to entertain the petitioner's petition, and the plan of readjustment filed therewith or to hear or determine this cause because this proceeding and the bankruptcy act under which this proceeding is brought, being Public No. 302, approved August 16th, 1937, is unconstitutional and void and affects the property rights of this respondent for the following reasons, to-wit:

1. Under Section 8, Article I of the Constitution of the United States, Congress has power to pass uniform laws on the subject of bankruptcy throughout the United States, and said Act is not a uniform law on the subject of bankruptcy throughout the United States.

2. That under said act private property may be taken [17] for public use without just compensation, contrary to the provisions of Amendment V of the Constitution of the United States, and the petitioner's petition and the plan of readjustment filed therewith propose to take respondent's property without just compensation.

3. That under the Constitution of the United States and the plan of government set forth therein, the Federal Government is a government of delegated powers, and no power has been delegated to Congress to pass legislation such as said Act of Congress, being Sections 81 to 84, inclusive, of the Bankruptcy Act of 1898, regulating the rights of citizens, and particularly this respondent, against the states or state governmental agencies in the manner therein provided.

4. That said act was passed in violation of the reserved rights of states of the United States as guaranteed to the states by Article X of the Federal Constitution, and because the passage of said act is a violation of the rights of citizens, and particularly these respondents, guaranteed and reserved to them by Amendment X to the Constitution.

5. Said act attempts to subject state governmental agencies to the jurisdiction of federal courts contrary to the plan and scheme of government, as set out in the Constitution of the United States.

6. Said act in other respects violates the Constitution of the United States.

Wherefore, respondent prays that petitioner take nothing by its alleged petition; that said petition and these proceedings be dismissed, and that respondent recover his costs.

W. COBURN COOK

Attorney for Respondent J. R.
Mason [18]

State of California,
County of Stanislaus—ss.

J. R. Mason, being first duly sworn, says:

That he is the respondent named in the foregoing Answer; that he has read said Answer and knows the contents thereof; that the same is true of his own knowledge, except the matters therein stated on information and belief, and as to those matters he believes it to be true.

J. R. MASON

Subscribed and sworn to before me this 9th day of March, 1938.

(Seal)

LESTER H. SHOCK

Notary Public in and for the County of Stanislaus,
State of California.

[Endorsed]: Filed Mar. 10, 1938. Walter B.
Maling, Clerk. [19]

[Title of District Court and Cause.]

PROOF OF CLAIM

J. R. Mason, being first duly sworn, says:

That he is a creditor of Paradise Irrigation District, the petitioner herein, and that he is the owner and holder of the following described bonds of said district, to wit: bonds numbered 93, 94, 95, 96, 97, 170, 171, 257, 258, 293 of the first issue, and bonds numbered, 23, 24, 25, 35, 36, 46, 81, 82, 94, 95, 96, 97, 98, 106, 106, 108, 109 and 110 of the second issue, each of the par value and sum of \$1000.00; and that of said bonds some have matured, to-wit: bonds numbered 23, 24 and 25, in the principal sum of \$3000.00, which said bonds matured July 1, 1937, and were presented for payment to the Treasurer of Paradise Irrigation District when they became due and payment demanded, and that the same are wholly unpaid and that the said matured bonds bear interest at the rate of 7% per annum from date of such presentation, and that said creditor has not been notified that funds are available for payment thereof; that each of said bonds bear interest at the rate of 6% per annum, evidenced by interest coupons payable on January 1st and July 1st of each year; that said J. R. Mason is the owner of all of the coupons attached to said bonds, of which coupons in the amount of \$3390.00 have matured and were presented to the treasurer for payment, together with interest thereon at the rate of 7% per annum from date of presentation to date of pay-

ment; that affiant by this proof of claim does not submit himself to the jurisdiction of this court except for the special purpose of objecting to the jurisdiction of this court.

J. R. MASON

Subscribed and sworn to before me this 9th day of March, 1938.

LESLIE H. SHOCK

Notary Public, Stanislaus County, California. [21]

Affidavit of mailing copy to Jerome D. Peters attached hereto.

[Endorsed]: Respondents No. 23. Filed 3-20-39.
Harry L. Fouts, D. C.

[Endorsed]: Filed Mar. 10, 1938. Walter B. Maling, Clerk. [22]

[Title of District Court and Cause.]

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW**

The petition heretofore filed herein by Paradise Irrigation District for confirmation of a plan of composition of its outstanding bonded indebtedness came on duly and regularly for hearing before this court on the 16th day of March, 1939, said District being represented by Jerome D. Peters, Esq., and J. R. Mason, a creditor of the District, having filed herein a motion to dismiss and an answer to said petition and objections to said plan of composition,

the said J. R. Mason having since the filing of the petition of the District purchased and acquired all of the bonds which were owned at the time of the filing by Mrs. Eugenia M. Masten, and those owned by the James H. Jordan Company, and said J. R. Mason being represented at said hearing by his attorney, W. Coburn Cook, Esq., and evidence, both oral [26] and documentary having been submitted in support of and in opposition to said petition of Paradise Irrigation District, and its plan of composition set forth therein, and the hearing having been completed, and the cause having been duly argued, briefed, and submitted to the court and duly considered, and the court having upon November 18, 1940, made and filed its order that the plan of composition of Paradise Irrigation District be confirmed upon findings of fact and conclusions of law to be filed, and the court now being fully advised in the premises, hereby makes findings of fact and conclusions of law with respect to the matter of Paradise Irrigation District; hereinafter sometimes called "petitioner" as follows, to-wit:

FINDINGS OF FACT

I.

That petitioner, Paradise Irrigation District, is and has been since the date of its organization, to-wit, the 7th day of March, 1916, an irrigation district, duly organized and existing under and by virtue of the provisions of the

and that it was organized and created for the purpose of constructing, improving, maintaining and

operating certain improvements or projects devoted chiefly to the improvement of lands therein for agricultural purposes by supplying water for the irrigation of said lands; that the indebtedness affected by the plan of composition referred to in said petition, is payable out of assessments levied against and constituting liens upon property within the boundaries of petitioner, or out of water tolls levied against the owners of lands within the district [27] using water upon said land or out of property acquired by foreclosure of any such assessments and/or water tolls which have been added to the assessment upon lands by reason of the nonpayment thereof, or from any other or more or all of said sources; that said Paradise Irrigation District is an eligible petitioner within the terms and meaning of Public No. 302, enacted by the 75th Congress and approved August 16, 1937, constituting an amendment to the uniform bankruptcy laws of the United States, and acts amendatory thereof and supplemental thereto, and that the petition herein was filed pursuant to the provisions of Chapter 10 thereof.

II.

That petitioner comprises approximately 11,000 acres of land, all of which is in the County of Butte, State of California, and in the Northern Division of the Northern Judicial District of the State of California and within the territorial jurisdiction of this court.

III.

That proof of due publication and mailing of notice to the creditors as heretofore ordered by this court, has been duly filed; that such notice was first published as required by law and the order of this court and that copies thereof were duly mailed to each creditor of petitioner, named in said petition, at the address of each such creditor given in said petition, *at the address of each such creditor given in said petition*, said address being the last known post office address of each creditor, at least sixty days before the date fixed for the hearing of said petition, and said notice specified the manner in which the claims and interests of creditors should be filed or evidenced; that said notice has been duly and regularly given in the time, form and manner as required by law and the [28] order of this court, and that said petition and all objections thereto have been duly and regularly heard.

IV.

That the filing of the petition herein by petitioner was authorized by proper resolution, duly adopted and passed by the Board of Directors of petitioner prior to the filing thereof, and that the fees required by law have been duly paid.

V.

That the petitioner was insolvent and unable to meet its debts as they matured, and was desirous of effecting a plan of composition of its outstand-

ing bonded indebtedness, and that at the time it made its offer of composition to the owners of its outstanding bonded indebtedness and at the time of filing of its petition herein for confirmation of its plan of composition, at the time of the hearing herein as aforesaid, and at all intervals between said times, petitioner was insolvent and unable to meet its debts as they matured. That the bonded indebtedness of petitioner, concerning which in these proceedings it desires to effect a plan of composition, consists of bonds in the total unpaid principal amount of \$476,000.00 and the unpaid interest due thereon. That said outstanding bonds of petitioner are described as follows, to-wit:

\$350,000.00 principal amount of bonds constitute the First Issue of said District, and consist of bonds of the denominations of \$1000.00 and \$500.00, all dated May 1st, 1917, and bear interest at the rate of 6% per annum, payable semi-annually on the 1st day of January and July of each year, with principal payable serially from May 1, 1938 to May 1, 1957, both dates inclusive. The bonds of said First Issue in the principal amount of \$350,000.00 are now outstanding and unpaid.

\$126,000.00 principal amount of the bonds constitute the [29] Second Issue of said district, and consist of bonds of the denomination of \$1000.00, all dated July 1st, 1920, and bear interest at the rate of 6% per annum, payable semi-annually on the first day of January and July of each year, with principal payable serially from July 1st, 1924 to July

1st, 1956, both dates inclusive. The bonds of said Second Issue in the principal amount of \$126,000.00, are now outstanding and unpaid.

That all of said bonds have been duly issued under the provisions of

approved _____, and acts amendatory thereof and supplemental thereto, which said Act, together with the act of the legislature of the State of California, approved June 19, 1931, Statutes of 1931, page 2263, as amended, provided for the method of levying assessments by the District upon the lands located therein for the purpose of paying the principal amounts of, and interest on said bonds and for other purposes.

VI.

That petitioner did, heretofore, by resolution duly adopted by its Board of Directors on the 27th day of September, 1937, duly propose and adopt a plan of composition of its outstanding indebtedness, and that said plan of composition is set forth in the resolution attached to said petition as Exhibit "A" and by reference incorporated therein and made a part thereof. That said plan of composition as set forth in said resolution is as follows, to-wit:

"The district proposes a composition of its present outstanding indebtedness by paying the holders thereof, in cash, the sum of 52.521 cents for each dollar of the principal amount of their respective bonds, exclusive of interest; that if any bond be presented with any appurtenant interest coupon maturing on or before July 1,

1934, missing, there shall be deducted from the amount payable thereon 45.67 cents for each dollar of the face amount of such missing coupon, and if any bond be presented [30] with any appurtenant unpaid interest coupon maturing subsequent to July 1, 1934, missing, there shall be deducted from the amount payable thereon a sum equal to the full face amount of such missing coupon. Provided, however, that where deductions are made on account of missing coupons and such missing coupons are afterward presented for payment, the holder thereof shall be paid the sum deducted from the amount payable to the holder of the bond on account of the missing coupon; that such payments will be made from the proceeds of a loan authorized by the Reconstruction Finance Corporation and which has been or will be disbursed to or for the benefit of the district for the purpose of reducing and refinancing its indebtedness.

To evidence such loan the district further proposes to issue and deliver to the Reconstruction Finance Corporation its new or refunding serial bonds in principal amount equal to the agreed amounts disbursed therefrom for the purposes mentioned, including the cost and expenses not to exceed \$2,500 incurred by the District in connection with its debt readjustment, together with 4% interest on all such disbursements from the date thereof until the new or

refunding bonds evidencing same are issued and delivered to the Reconstruction Finance Corporation as authorized by an election held by the district on the 28th day of September, 1934.

The new or refunding serial bonds to be issued and delivered by the district to the Reconstruction Finance Corporation will bear interest from date until paid at the rate of 4% per annum, payable semiannually; the first installment of principal will mature three years after date thereof, and thereafter the remaining installments of principal will mature annually according to a schedule therefor which is acceptable to the Reconstruction Finance Corporation.

Or, in the alternative, the details of the above plan may be reasonably modified in such particulars as the Court deems just and proper, and as may be acceptable to the Reconstruction Finance Corporation and the president and secretary of the district."

VII.

That the payments to be made as provided in said plan of composition are the full amount which petitioner is able to pay on its aforesaid indebtedness. That said plan of composition as proposed and offered herein by petitioner is fair, equitable and for the best interests of its creditors and does not discriminate unfairly in favor of or against any creditor, or creditors, or class of creditors; that said

plan of composition [31] complies with the provisions of the National Banking Act of the United States and of all of the provisions of Public No. 302, enacted by the 75th Congress, approved August 16, 1937. That before the filing of the petition herein, said plan of composition was accepted and approved in writing by and on behalf of creditors of petitioner owning more than 51% in amount of the securities effected by said plan, excluding, however, any such securities owned, held, or controlled by the petitioner; that at the time of filing of the petition herein, said plan of composition had been accepted and approved in writing by or on behalf of the owner of more than 92% of the aggregate amount of securities or claims of all classes effected by such plan, excluding, however, any securities or claims owned, held or controlled by the petitioner; that of the \$476,000.00 of indebtedness evidenced by such outstanding bonds of the District, the owner of \$447,000.00 of such securities consented to said plan, and the owners of \$29,000.00 did not consent; that the bonds last mentioned, the owners of which did not consent to said composition plan, are as follows, to-wit:

First Issue; bond numbers;

93,

94,

95,

96,

97,

170,
171,
257,
258,
293.

Second Issue, bond numbers;

23,	82,	108,
24,	94,	109,
25,	95,	110.
35,	96,	
36,	97,	
46,	98,	
47,	106,	
81,	107, [32]	

That said plan of composition at the time of the filing of the petition herein and now has been accepted in writing by or on behalf of such class of creditors holding more than $\frac{2}{3}$ of the aggregate amount of claims of all classes effected by said plan, and which have been admitted by the petitioner or allowed by the Judge of this court, but excluding claims owned, held or controlled by the petitioner; that in all respects said plan has been accepted and approved as required by the provisions of Section 83 of Chapter 10 of Public 302, enacted by the 75th Congress and approved August 16, 1937; that all amounts to be paid by the petitioner for services or expenses incidental to the composition have been fully disclosed and are reasonable; that the offer of

said plan and its acceptance, as aforesaid, are in good faith; and that the petitioner is authorized by law to take all action necessary to be taken by it to carry out the plan.

VIII.

That prior to the filing of the petition, the Reconstruction Finance Corporation, an agency of the United States, pursuant to contract with petitioner, purchased at the composition rate aforesaid and became the owner of, and ever since has owned, held and controlled, and now owns, holds and controls, over 92% in amount of the outstanding bonds and other evidence of indebtedness of the petitioner effected by the plan of composition and debt readjustment proposed herein. The Reconstruction Finance Corporation, prior to the filing of the petition, had purchased and owned, held and controlled bonds of the petitioner aggregating in principal amount \$447,000.00; that said Reconstruction Finance Corporation is a creditor of petitioner in the amount of the full face value of said bonds and the interest due thereon so purchased, owned, held and controlled by it. That there are no bonds or other securities or other evidences of indebtedness owned, held, [33] or controlled by said petitioner District. That before the filing of the petition herein, said Reconstruction Finance Corporation in writing accepted the plan of composition hereinbefore set forth, and its acceptance is attached as Exhibit "B" to the petition herein and made a part thereof and reference thereto therein.

IX.

That all of the indebtedness of petitioner effected by said plan of composition is payable by the petitioner District without preference and out of funds derived from the same source or sources, and all of the creditors of petitioner District effected by said plan of composition constitute but one class. That no creditor of the petitioner District, other than the holders of said outstanding bonds and interest coupons due thereon, is effected by said plan of composition.

X.

That all the allegations and averments set forth in said petition for confirmation of the plan of composition of petitioner's outstanding bonded indebtedness are true; and that all the denials of said petition set forth in the answers of objectors are untrue.

That upon the 8th day of December, 1936, the District paid to J. R. Mason upon the non-assenting bonds hereinabove set forth, interest in the sum of \$1077.66, and upon January 5, 1937, interest upon said bonds in the sum of \$1958.29, making a total of \$5035.95.

XI.

That respecting the plea of res adjudicata filed by J. R. Mason, the only objector herein, the court finds as follows:

That heretofore on the 21st day of December, 19 , petitioner herein filed in this court its petition for debt [34] readjustment under and pursuant to

the provisions of paragraphs 78 to 80 of the Bankruptcy Act added by Act May 24, 1934, 11 U. S. C. A., Sections 301 to 303. That by said proceeding, petitioner sought to confirm a plan of readjustment of its outstanding bonded indebtedness, which is the same substantially as the plan submitted in the present proceeding. That on May 25, 1936, the Supreme Court of the United States decided the case of *Ashton v. Cameron County Water Improvement District*, 298 U. S. 513, 80 L. Ed. 1309, wherein said court held that said act of Congress approved May 24, 1934, Chapter 345, and designated as Sections 78, 79 and 80 of the Bankruptcy Act of the United States, was unconstitutional. That thereafter, pursuant to notice of memorandum to dismiss theretofore filed with this court by certain objecting creditors, on the ground that the decision of the Supreme Court of the United States in said *Ashton* case aforesaid, rendered this court without jurisdiction in said proceeding, this court did on October 28, 1936, grant said motion of said objecting creditors to dismiss said proceeding. That no trial or judgment on the merits of said amended petition filed by petitioner, pursuant to said Act of Congress approved May 24, 1934, Chapter 345, and designated as Sections 78, 79 and 80, of the Bankruptcy Act of the United States was ever had. That this Court finds that said proceeding so dismissed was based upon a law holding null and void, and which conferred no jurisdiction upon the court, and that there was no trial or judgment on the merits in said

proceeding. That this court finds that the proceeding now before this court, based upon an entirely different law and one which does confer jurisdiction upon this court, and that petitioner herein is not barred in this proceeding by *res adjudicata*, or otherwise. [35]

CONCLUSIONS OF LAW

As conclusions of law from the foregoing facts the court finds and concludes:

I.

That the plan of composition of the bonded indebtedness of Paradise Irrigation District of Butte County, California, should be approved and confirmed, and the motion to dismiss the petition of petitioner should be denied.

II.

That petitioner is entitled to an interlocutory decree and judgment approving and confirming said plan of composition as proposed and presented and contained in said petition, and as specifically set forth in paragraph VI of these findings, to which latter paragraph reference is hereby particularly made and which plan as therein set forth is hereby incorporated in these conclusions.

III.

That said interlocutory decree should provide that all the outstanding bonds of petitioner as itemized and enumerated in the petition in this cause,

or in the schedules annexed thereto and made a part thereof, and as specifically set forth in these findings of fact and conclusions of law, are of one and the same class and are payable without preference out of funds derived from the same source or sources and are hereby allowed as obligations of the petitioner, whether presented or not, and that the several holders thereof are entitled to ratably participate in the distribution of the funds in accordance with the plan of composition and the decrees of the court.

IV.

That said interlocutory decree should provide for [36] authority for petitioner to immediately issue and sell its refunding bonds to the Reconstruction Finance Corporation in amounts required to pay the incidental expenses of these proceedings, not to exceed \$2500.00, and to pay a sum equal to 52.521 cents on the dollar of the principal amount of its outstanding bonds (not purchased by the Reconstruction Finance Corporation) and to repay the Reconstruction Finance Corporation, the money expended by it for the purchase of the old bonds of the petitioner as herein provided, with interest on disbursements from such purchases at 4% per annum from date thereof, and shall further provide that such old bonds so purchased by the Reconstruction Finance Corporation will be thereupon cancelled and returned to petitioner, and should provide further that such refunding bonds so issued and sold by petitioner to the Reconstruction Finance Corpora-

tion are valid obligations of the District, and shall not at any time be effected by the plan of composition or these proceedings.

V.

That said interlocutory decree should also provide a disbursing agent of this court, with whom petitioner shall deposit the sum necessary to pay the holders of its outstanding bonds, other than bonds which shall have been purchased by the Reconstruction Finance Corporation as in the decree provided and that the holders of such outstanding bonds shall therein be required to deposit such bonds with all unpaid interest coupons attached with the disbursing agent before payment is made; that if any bonds are so deposited with any unpaid interest coupons due on or before July 1st, 1934, missing, the disbursing agent shall make a deduction from the amount to be paid therefor in a sum equal to 45.67 cents for each dollar of the face amount of such missing coupons; if any bonds be deposited with any unpaid [37] interest coupons maturing after July 31, 1934, missing, a deduction shall be made from the amount to be paid therefor equal to the full face value of the missing coupons. Said decree shall also provide for the payment of such coupons missing from deposited bonds with a time prescribed in such decree.

VI.

Said interlocutory decree shall also provide for the payment of bonds which may not be deposited

as ordered by the court in such decree, and shall likewise provide for the publication of notice to the holders of outstanding bonds directing their deposit within the time set in said decree and shall also provide for the rights of the Reconstruction Finance Corporation in relation to the old bonds purchased by it until the refunding bonds of the District in satisfactory form have been delivered by the petitioner to such Corporation.

VII.

Said interlocutory decree shall also enjoin holders of outstanding bonded indebtedness of the District from attempting the enforcement or collection of the same in any manner pending the entry of the final decree herein.

VIII.

Said interlocutory decree shall fix and tax against petitioner the costs and expenses of these proceedings, which shall include a reasonable attorney fee,

in a sum not to exceed \$2500.00; that the agreement between petitioner and the Reconstruction Finance Corporation, is, that the latter will advance to the district the costs and expenses of the composition proceedings, including a reasonable attorney fee, all not to exceed \$2500.00, and for which in event the advance is made, petitioner will issue and deliver to the Reconstruction Finance Corporation bonds of its new issue for purposes of composition, in the amount of [38] the advance, and similar to those to be issued and delivered to said corporation for money advanced to effect the composition proposed; that in fact the district has expended in excess of \$2500.00, for costs and expenses, including a reasonable attorney fee, in the composition proceedings, the amount thereof being so expended to date the sum of \$3634.77, an itemized statement of which is as follows:

Orrick, Palmer & Dahlquist, R. F. C. Bond counsel	\$ 544.23
Printing re-financing bonds	180.00
Election supplies	123.65
Expense of bond election	196.65
Printing escrow papers, Bank of America	49.49
Bank of America escrow fee	825.07
H. S. Clewett, attorney fee	1,000.00
Witness fees	49.26
K. C. Gagan, Court Reporter	71.42
Jerome D. Peters, attorney fee	595.00
Total	\$3,634.77

That said interlocutory decree shall fix and tax against petitioner the costs and expenses of the composition proceedings, including a reasonable attorney fee, all not to exceed the sum of \$2500.00.

IX.

That upon compliance with the interlocutory decree, petitioner shall be entitled to a final decree as provided by law.

Dated this 3rd day of February, 1941.

HAROLD LOUDERBACK,

Judge of the United States District Court, Northern
District of the State of California.

[Endorsed]: Filed Feb. 3, 1941. Walter B.
Maling, Clerk. [39]

In the District Court of the United States for the
Northern District, of the State of California

Federal Court No. 7703

In the Matter of

Paradise Irrigation District

INTERLOCUTORY DECREE

This cause came on this day before me to be heard upon application of Paradise Irrigation District for confirmation of its plan of composition of indebtedness, heretofore filed in this Court, and the Court having heard the testimony as presented by the respective parties, together with the argument of counsel, and being fully advised in the premises, finds as follows:

I. That the petitioner is an irrigation district duly organized and existing under the laws of the State of California, and is an eligible petitioner

within the terms and meaning of Public No. 302, enacted by the Seventy-fifth Congress and approved August 16, 1937 (constituting an amendment to the uniform bankruptcy laws of the United States and acts amendatory thereof and supplemental thereto), and that the petition herein was filed pursuant to the provisions thereof.

II. That petitioner is located in Butte County, [40] California, and within the territorial jurisdiction of this Court; that proof of publication of the notice of creditors heretofore ordered by this Court has been duly filed; that such notice was first published as required by law and the order of this Court upon December 30, 1937 in *The Chico Record*, a newspaper of general circulation published in the City of Chico, County of Butte, State of California, within the jurisdiction of this Court, and was published therein once a week for three successive weeks, and that said notice was also first published upon the 31st day of December, 1937 in the Pacific Coast Edition, *The Wall Street Journal*, which is a newspaper of general circulation among bond dealers and bond holders, and is published in the State of California, and that said notice was published therein once a week for three successive weeks, and that copies of said notice were duly mailed to each of the creditors at their last known post office addresses at least sixty days before the date for this hearing.

III. That the filing of the petition herein was authorized by proper resolution duly passed and

adopted by the Board of Directors of the petitioner prior to the filing thereof, and that the fees required by the act hereinbefore mentioned were duly paid.

IV. That the petitioner is insolvent or unable to meet its debts as they mature and desires to effect a plan for the composition of its debts; that the plan of composition as offered by the petitioner herein is fair, equitable and for the best interest of its creditors, and does not discriminate unfairly in favor of any creditor or class of creditors; that the plan of composition of debts complies with the provisions of Section 83, Chapter X, of the Bankruptcy Act of 1898, as amended, and has been accepted and approved in writing by or on behalf of creditors holding at least 92 per centum of the aggregate amount of claims [41] of all classes affected by such plan, and which have been admitted by the petitioner and allowed by the Court, excluding claims owned, held or controlled by petitioner; that all amounts to be paid by petitioner for services or expenses incidental to the composition of its indebtedness have been fully disclosed and are reasonable and that the offer of the plan and its acceptance are in good faith and petitioner is authorized by law upon confirmation of the plan to take all action necessary to carry out the terms thereof.

V. That since the filing of petition of petitioner, the debts listed in the petition as owing to the creditor Mrs. Eugenia M. Masten and to the creditor James H. Jordan Company and the bonds listed

therein as being 'owned by her and said Company, have been sold, transferred and assigned to the creditor J. R. Mason, and the said creditor J. R. Mason is now the owner and holder thereof, and of all the bonds listed in the petition, as owned by them.

It is, therefore, ordered, adjudged and decreed as follows:

1. That the plan of composition of the debts of Paradise Irrigation District of Butte County, California, be and the same is hereby approved and confirmed.

2. That all of the outstanding bonds of petitioner as itemized and enumerated in the petition in this cause, or in the schedules annexed thereto and made a part thereof, are of one and the same class, are payable without preference out of funds derived from the same source or sources, and are hereby allowed as obligations of the petitioner, whether presented or not, and that the several holders thereof are entitled to ratably participate in the distribution of the funds in accordance with the plan of composition and the decree of this Court as hereinafter provided. [42]

3. That in order to provide the funds necessary to pay the incidental expenses and to pay for the outstanding bonds of the petitioner as contemplated by the plan of composition aforesaid and the orders of this Court, petitioner is hereby authorized to forthwith duly issue and sell its refunding bonds to the Reconstruction Finance Corporation in

amounts required to pay such incidental expenses, not to exceed \$2500.00, and to pay the sum equal to 52.521 cents on the dollar of the principal amount of its outstanding bonds (not purchased by the Reconstruction Finance Corporation), and to repay the Reconstruction Finance Corporation the money expended by it for the purchase of the old bonds of the petitioner as herein provided, with interest on all disbursements for such purposes at 4% per annum from date thereof. That the old bonds so purchased by the Reconstruction Finance Corporation will thereupon be cancelled and returned to petitioner and that each and all of said refunding bonds so issued and sold by petitioner to the Reconstruction Finance Corporation, as provided herein, are hereby declared to be valid obligations of such district and shall not at any time be affected by the plan of composition, or these proceedings.

4. That during the pendency of these proceedings the Reconstruction Finance Corporation is authorized to purchase from the holders thereof any of the outstanding bonds of petitioner upon the following terms and conditions, to-wit: The Reconstruction Finance Corporation to pay in cash the sum of 52.521 cents on each dollar of the principal amount of the outstanding bonds, paying nothing on interest, and deducting from the amounts payable the sum of 45.67 cents on each dollar of the face amount of any missing coupons maturing on or before July 1, 1934, and if any of such bonds have any appurtenant unpaid interest coupons [43] ma-

turing subsequent to July 1, 1934, that are missing, there should be deducted from the amount payable thereon a sum equal to the full face amount of such missing coupons, provided, however, that where deductions are made on account of missing coupons and such missing coupons are afterwards deposited for payment, within the time prescribed by this decree, namely, within thirty days after receipt by the disbursing agent of the money with which to retire the same, as hereinafter provided, the holder thereof shall be paid the sum deducted from the amount payable to the holder of the bond on account of the missing coupons. That when purchased, as provided in this paragraph, the old bonds shall be delivered to the Reconstruction Finance Corporation and held by it as security for the funds furnished by it for such purpose, with interest thereon at 4% per annum until such time as it receives from petitioner its refunding bonds for such disbursements and interest, or petitioner may pay such interest and deliver bonds for the principal.

5. That the petitioner deposit with the Bank of America National Trust and Savings Association, a National banking association, Chico Branch, in the City of Chico, County of Butte, State of California, as disbursing agent of this court, the sum necessary to pay the holders of its outstanding bonds, other than bonds which shall have been purchased by the Reconstruction Finance Corporation as herein provided, 52.521 cents on the dollar of the unpaid principal amount thereof, excluding all in

terest due or to become due, and the holders of said bonds be and they are hereby required to deposit said bonds with all unpaid interest coupons attached with the disbursing agent before payment is made as herein provided; that if any bonds are so deposited with any unpaid interest coupons due on or before July 1, 1934, missing, the disbursing agent shall make a deduction from the amount to [44] be paid therefor, in a sum equal to 45.67 cents for each dollar of the face amount of such missing coupons, and if any bond be deposited with any unpaid interest coupons maturing after July 1, 1934, missing, deductions shall be made from the amount to be paid therefor equal to the full face value of the missing coupons. In case any deductions are made on account of missing coupons, and such coupons are afterwards deposited within the time prescribed by this decree, there shall be paid to the holder of such missing coupons the amount deducted therefor; that when payment shall have been made for the old bonds and coupons as provided in the plan of composition and this decree, the disbursing agent shall mark said bonds and coupons so paid "Cancelled" and return them to the petitioner.

6. That in the event any of the old bonds and interest coupons are not surrendered to the disbursing agent within thirty days after receipt by such agent of the money with which to retire the same, then the proportionate sum to which the holders thereof may be entitled under the plan of

composition and terms of this decree, shall be paid by the disbursing agent to the clerk of this Court as Registrar, and thereafter paid by him to the holders of such bonds in accordance with the provisions of this decree and such further decrees of this court as made in reference to the payment of such bonds.

7. That a copy of this judgment be served upon W. Coburn Cook, attorney of record in these proceedings for and in behalf of J. R. Mason, being the sole owner of bonds of the district effected by the plan of composition herein approved who has not consented to the plan of composition, such service to be either personally or by mail, and that service upon said attorney by either method will constitute and be notice to the said J. R. Mason, said sole owner of bonds of the district not consenting [45] to said plan of composition, that he is required to deposit any and all bonds of the petitioner with the disbursing agent above named within the thirty day period hereinafter provided or thereafter with the clerk of this Court for payment in accordance with this decree or be forever barred from claiming or asserting as against petitioner or any individually owned property located within petitioner district or the owners thereof any claim or lien arising out of said bonds; provided, however, that nothing contained herein shall preclude the Reconstruction Finance Corporation from asserting its rights and claims under the old bonds so purchased by it to the extent and amount so expended in acquiring the same, with interest thereon at the rate of 4% per

annum, until petitioner shall have delivered to the Reconstruction Finance Corporation its refunding bonds in form satisfactory to said Reconstruction Finance Corporation in the aggregate amount equal to the money so expended in acquiring such old bonds, with interest.

That said disbursing agent, said Bank of America National Trust and Savings Association, Chicago Branch, upon receipt of the money with which to pay the composition sum to the said J. R. Mason, the sole owner of bonds of the district not assenting to the district's plan of composition as herein approved, shall give notice either personally or by mail to W. Coburn Cook, Esq., attorney of record for the said J. R. Mason, of the receipt of said money with which to pay said composition sum, which notice shall contain a further provision that under and by virtue of the terms of this decree the said J. R. Mason has thirty days thereafter in which to present his bonds to said disbursing agent for payment in accordance with the plan of composition herein approved.

8. That after the expiration of thirty days from the [46] date of receipt of the funds to carry out the terms of the plan of composition and retire the outstanding indebtedness as provided in such plan, the disbursing agent shall make full and complete report to this Court for confirmation, including an itemized statement of all receipts and disbursements together with a list of old bonds outstanding at the time of such report, showing serial number of and amount of each outstanding unpaid bond.

9. That any and all holders of the outstanding indebtedness of petitioner district be and are hereby enjoined, pending the entry of final decree herein, from attempting the enforcement or collection of any claim, judgment or lien, by legal proceedings or otherwise, which they may have, against petitioner or against any of the lands situated within petitioner district and held by individuals.

10. That the cost and expenses of these proceedings, including a reasonable attorney's fee to petitioner's attorney for services in these proceedings, be taxed against the petitioner herein in the sum of \$2500.00.

11. That, upon the provision of this interlocutory decree being fully complied with, petitioner receive a final decree as provided by law.

Done, ordered and decreed in the above entitled court in Chambers in the City of Sacramento, State of California, this 3rd day of February, 1941.

HAROLD LOUDERBACK,

Judge of the United States District Court, Northern District of the State of California.

[Endorsed]: Filed Feb. 3, 1941. Walter B. Maling, Clerk. [47]

[Title of District Court and Cause.]

NOTICE OF ENTRY OF JUDGMENT

To J. R. Mason, Contestant, and to W. Coburn Cook, Attorney for Contestant:

You and each of you will please take notice that the above entitled court entered its interlocutory

judgment in the above matter upon the 3rd day of February, 1941, a true copy of which interlocutory judgment is hereto attached, and is hereby made a part hereof.

Dated this 6th day of February, 1941.

JEROME D. PETERS,

Attorney for Petitioner Paradise
Irrigation District. [48]

[Endorsed]: Filed Feb. 7, 1941. Walter B. Mal-
ling, Clerk. [50]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Circuit Court of Appeals for the Ninth Cir-
cuit (Under Rule 73):

Notice is hereby given that J. R. Mason, creditor of Paradise Irrigation District and respondent in this cause, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the Interlocutory Decree Confirming Plan of Composition entered in this action on February 3rd, 1941, the same being the Interlocutory Decree Confirming Plan of Composition entered after the hearing upon the plan of composition and from the whole thereof.

Dated: March 4, 1941.

W. COBURN COOK,

Attorney for Appellant
Berg Building
Turlock, California

[Endorsed]: Filed Mar. 8, 1941. Walter B. Mal-
ling, Clerk. [51]

[Title of District Court and Cause.]

**STATEMENT OF POINTS ON APPEAL AND
ASSIGNMENT OF ERRORS.**

The appellant states that the points on which he intends to rely on appeal in this cause and the errors which he avers occurred at the trial and determination of this proceeding and the rendering of the decree appealed from are the following:

1. The trial court had no jurisdiction of the cause nor of the parties.

2. The plan of composition herein is unfair, inequitable and unjust and is not for the best interests of the creditors and it discriminates unfairly against the appellant.

3. The plan does not comply with the provisions of Chapter IX of the Bankruptcy Act of the United States.

4. The offer of the plan and its acceptance are not in good faith.

5. The Paradise Irrigation District at the time of the filing of this petition and of the hearing and of the entry of the decree was not or is not insolvent nor unable to pay its debts as they mature.

6. The evidence adduced at the hearing was insufficient to sustain the petition. [52]

7. The court erred in classifying the creditors as one class.

8. The court erred in entering the decree herein taking vested rights of the appellant.

9. The court erred in approving and confirming the plan of composition.

10. The plan of composition discriminates unfairly against J. R. Mason, appellant.

11. The court erred in confirming the decree as to J. R. Mason and in not holding that he should not be made subject to the plan of composition.

12. The plan of composition violates the 5th Amendment to the Constitution of the United States by taking appellant's property and giving it to others without compensation.

13. The court erred in not finding the facts specially.

14. The court erred in that the findings do not determine what the assets or liabilities of the Paradise Irrigation District are while finding that the district is insolvent.

15. That the plan of composition is not fair or equitable and that it is discriminatory in that it does not provide for the payment in full of the claim of J. R. Mason, appellant.

16. That the court erred in not stating the Findings of Fact and Conclusions of Law separately.

17. The plan of composition is unfair in that no allowance of counsel fees is made for appellant's counsel.

18. The plan of composition violates the provisions of Section III, Public No. 669, 76th Congress.

19. The court erred in that the court did not carefully examine all the contracts, proposals, acceptances, deposit agreements, and all other papers relating to the plan, specifically for the purpose of ascertaining if the fiscal agent, attorney, or other

person, firm or corporation promoting the composition, [53] or doing anything of such a nature, has been or is to be compensated directly or indirectly by both the petitioner and the creditors thereof or any of said creditors—either by fee, commission or other similar payment, or by transfer or exchange of bonds or other evidence of indebtedness whereby a profit could accrue—or make a sufficient examination under oath to make certain whether or not any such practice obtained or might have obtained.

20. That the court erred in that it did not make an adjudication of the issues mentioned in the foregoing assignment of errors as a separate part of his interlocutory decree, and erred in that it did not forthwith dismiss the proceedings on the grounds that such practice was possible and, in fact, prevails, although the appellant had specifically requested the court to examine into the possibility of such practice.

21. The plan of composition violates local law and the carrying out of the plan is not authorized by local law.

22. The plan is unfair, inequitable and discriminatory and proposed by the district in bad faith inasmuch as the appellant was paid certain coupons voluntarily by the district and the district now seeks to penalize the appellant by deducting from the composition offer the amount formerly voluntarily paid to him.

23. The plan of composition is unfair and discriminatory because the Bondholders' Protective

Committee was favored over the appellant in that on one of the coupons he was paid \$10 and the Committee was paid \$40. Furthermore, the Committee received compensation from the district and there was no showing as to what compensation if any was received by the Committee from the bondholders.

24. The plan of composition is unfair because the bulk of the bonds mature in the future.

25. The plan of composition should not have been approved because there was no complete financial statement or [54] accounting made to the court or showing as to the available assets in comparison to the liabilities and the court made no findings thereon.

26. It was not established that two-thirds in amount consented to the plan of composition nor that any other amount of the securities involved in the plan of composition consented.

27. The claims were not properly classified because the appellant and the Reconstruction Finance Corporation have claims in different amounts.

28. The plan of composition should not have been approved because the appraisal made by the Reconstruction Finance Corporation which was a basis for the composition offered was not before the court nor examined nor disclosed to the court.

29. The plan of composition is unfair because it offers one creditor refunding bonds but denies refunding bonds to the appellant and because in-

terest was paid to the Reconstruction Finance Corporation which was denied to the appellant.

30. The plan of composition is presented in bad faith and it is inequitable because coupons which were fully satisfied and paid were delivered to the Reconstruction Finance Corporation and no deduction made from the amount paid the Reconstruction Finance Corporation for such liquidated coupons.

31. The court erred in entering the interlocutory decree since the same is uncertain and unintelligible in that it cannot be determined therefrom, whether the appellant is to be penalized for the amounts paid to him on his coupons and on the other hand if the decree be interpreted as so penalizing him the plan is unfair.

32. The plan of composition is not presented in good faith because after having proposed a plan of composition in 1934 or 1935 to the creditors the district voluntarily paid to the appellant large sums of money in satisfaction and liquidation [55] of certain matured coupons, which constituted abandonment of the plan of composition and subsequently it proposes a new plan of composition which seeks to penalize the appellant for the voluntary payments made. If therefore the former plan is the one presented it has been abandoned. If a new plan is presented, then there is discrimination in relation to the Reconstruction Finance Corporation.

33. The plan is unfair because in the words of counsel for the district "There should be credited against the sums to be obtained by the respondent the value of the interest coupon of July, 1934, namely, the sum of \$30.00, and which coupons were purchased by the district from the respondent in 1934 for the sum of \$10 cash." This shows a lack of good faith since the district seeks to penalize Mason \$20 on each of such coupons when they have already obtained their surrender for \$10 each.

34. The plan is unfair and in bad faith because under it appellant is required to repay interest he received for 1934, 1936 and 1937 but large sums of interest paid to the R. F. C. are not deducted from the amount it will receive.

35. The appellee failed to comply with Rule 22 of the District Court of Appeal.

36. The plan is not in good faith because the district had a feasible plan by which five years of interest were voluntarily surrendered at a reduced rate.

37. The plan has been wholly executed out of court.

Wherefore, appellant prays that the decree of the District Court appealed from shall be reversed.

Dated: May 3, 1941.

W. COBURN COOK,
Attorney for Appellant.

[Endorsed]: Filed May 5, 1941. Walter B. Mal-
ing, Clerk. [56]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

The appellant designates the following as those parts of the record as necessary for the consideration of the points upon which the appellant intends to rely in this appeal:

1. Petition for Confirmation of Composition or Debt Readjustment.

2. Answer of J. R. Mason.

3. Proof of Claim of J. R. Mason and Reconstruction Finance Corporation.

4. Reporter's Transcript of Proceedings and Testimony.

5. The following portion of Petitioner's Exhibit No. 1: Down to Paragraph I; paragraph IV (d), (e), the first sentence in (h), the fourth paragraph on Page 11; paragraph VII with annexed schedules; paragraph VIII (c); and the whole of Page 36.

6. Petitioner's Exhibit No. 2, 3 (i), 3 (j), 4, 5, 7, 10 and 11.

7. Certain portions of Petitioner's Exhibit No. 8, namely: Commencing second paragraph of Page 2, down to line 12, Page 3; commencing last paragraph Page 13 through paragraph numbered 3, Page 27; Pages 44, 45, 49 through 53, and Page 57. [58]

8. Respondent's Exhibits Numbered one, 2, 3, 5, 10, 14, 16, 17, 23, 24, 25 and A Ident.

9. Findings of Fact and Conclusions of Law with proof of compliance with Rule 22 of District Court of Appeal and endorsement of approval or disapproval, if any.

10. Interlocutory Decree with proof of compliance with Rule 22 of District Court of Appeal and endorsement of approval or disapproval, if any.

11. Notice of entry of judgment.

12. Minute Order of Court on date of hearing.

13. Notice of Appeal with Clerk's entry of mailing endorsed, thereon.

14. Stipulations and Orders made subsequent hereto.

15. Statement of Points on Appeal and Assignment of Errors.

16. This designation of contents of record on appeal.

Dated: May 2, 1941.

W. COBURN COOK,

Attorney for Appellant.

[Endorsed]: Filed May 5, 1941, Walter B. Maling, Clerk. [59]

[Title of District Court and Cause.]

DESIGNATION BY APPELLEE OF ADDITIONAL PORTIONS OF RECORD, PROCEEDINGS, AND EVIDENCE TO BE INCLUDED IN RECORD ON APPEAL.

The Appellee designates the following as those portions of the record as necessary for the con-

sideration of the points that will arise upon said appeal, in addition to the designation heretofore made by the appellant, as follows, to-wit:

1. Petitioner's Exhibit No. 1.
2. Petitioner's Exhibits No. 3-2, 3-d, 3-e, 3-f 3-h.

3. Pages 1 and 2 of Petitioner's Exhibit No. 8, commencing on the 2nd paragraph on page 27 of Petitioner's Exhibit No. 8, to the last paragraph on page 38; pages 47 and 48; pages 54 to and including page 56 and including "Exhibit h" being entitled "Resume of Annual Reports of the District", which appears between said pages 54 and 56, and is page 55.

4. Respondent's Exhibit No. 4; No. 19 and No. 21."

5. This designation constitutes appellee's designation of additional portions of the record, proceedings and evidence it desires included in the record on appeal, in addition to such designated by appellant in its "Designation of Contents of Record on appeal."

JEROME D. PETERS

Attorney for appellee

Affidavit of service by mail on W. Coburn Cook attached hereto.

[Endorsed]: Filed May 9, 1941. Walter B. Mal-
ing, Clerk. [60]

[Title of District Court and Cause.]

In the above cause it is ordered that the time for filing and docketing record on appeal taken by the appellant from the interlocutory decree confirming plan of composition is extended to and including May 17, 1941.

Dated: April 18th, 1941.

HAROLD LOUDERBACK

Judge.

[Endorsed]: Filed Apr. 18, 1941. Walter B. Maling, Clerk. [63]

[Title of District Court and Cause.]

In the above cause it is ordered that the time for filing and docketing record on appeal taken by the appellant from the interlocutory decree confirming plan of composition is extended to and including June 6, 1941.

A. F. ST. SURE

Judge.

[Endorsed]: Filed May 13, 1941. Walter B. Maling, Clerk. [65]

[Title of District Court and Cause.]**NARRATIVE STATEMENT OF EVIDENCE**

The following is a narrative statement of the evidence and testimony presented before the United States District Court, in and for the Northern

District of California, Hon. Harold Louderback, Judge, presiding at the hearing of the petition for composition of debt adjustment of the Paradise Irrigation District on March 17, 1939. Jerome D. Peters, Esq., appearing for Petitioner, and W. Co-burn Cook, Esq., appearing for the Respondent, J. R. Mason, owning \$29,000 principal bonds of Petitioner.

It was stipulated that at the time the district authorized application for a loan to the Reconstruction Finance Corporation, herein called R.F.C., there were two issues of bonds of the District outstanding—the first being the issue of 1917 bearing 6% interest per annum, payable semi-annually, upon the first days of January and July, with maturities ranging from 1938 to 1957 and in the principal amount of \$350,000. The second issue was dated July 1, 1920, bearing 6% interest, payable similarly, with maturities ranging from 1925 to 1956, principal amount, \$126,000, making total bond issues of \$476,000. On December 18, 1933, the Board of Directors of the district [66] authorized an application for a loan to be made to the R.F.C.; THE PURPOSE OF THE APPLICATION AS STATED THEREIN WAS FOR THE PURPOSE OF SECURING MONEY TO REFINANCE THE OUTSTANDING BONDED INDEBTEDNESS OF THE DISTRICT; a copy of said application was received in evidence as Petitioner's Exhibit 1; upon May 22, 1934, the R.F.C. adopted a resolution authorizing such loan TO ENABLE THE DISTRICT TO RE-

DUCE AND REFINANCE ITS OUTSTANDING INDEBTEDNESS, PURSUANT TO THE PROVISIONS OF SECTION 36, PART 4 OF THE EMERGENCY FARM ACT OF 1933, AS AMENDED; a copy of said resolution was introduced in evidence as Petitioner's Exhibit 2.

PETITIONER'S EXHIBIT No. 1

Petitioner's Exhibit 1 was application for loan made to the Reconstruction Finance Corporation by the Paradise Irrigation District dated December 18th, 1933, giving a history of the district and stating in its preamble:

"Paradise Irrigation District, an irrigation district duly organized and existing under and by virtue of the laws of the State of California, hereby makes application for a loan for the purpose of refinancing its outstanding bonded indebtedness, * * *"

The application further stated that the landowners of the district are largely composed of people who, prior to the general financial depression possessed a certain amount of property or income from other sources and as long as these sources of income were unimpaired the landowners as a whole were in fairly secure financial condition. But few if any of them possessed any considerable means. There are comparatively few farms in the district which have been as yet developed to the place where they are commercial enterprises, the great majority of the farms

consisting of young orchards just beginning to come into bearing. Due to the general lack of employment and the closing down or curtailing of operations of the industries in the vicinity, and the general shrinking in value and curtailment or elimination or complete loss of outside investments, the financial condition of the landowners has become very acute. Up until the commencement of the present financial depression there had been no particular difficulty in meeting the payments required, although it was becoming more burdensome as the principal maturities increased, and even without the financial crisis the time would undoubtedly have been reached when it would have been impossible to meet the heavy principal maturities under the present setup.

A large majority of the landowners are operating their properties upon a subsistence homestead basis, that is, [96] they have established homes and developed their property along the line of obtaining from the land itself as large a proportion as possible of the living for the family, but depending to a large extent upon employment in outside industries.

Due to the heavy bonded indebtedness of the district the bankers and financial institutions have adopted the policy of refusing mortgages, with few exceptions, and as a result there are comparatively few encumbrances against the property, and such as there are are largely held by private individuals having local connections.

“(e) County Taxes

That the following is a statement of the average assessed valuation per acre of land for county and school district taxes for the past five years. (No ad valorem state taxes are levied on real estate in California.)

	Average assessment Value per acre	Percentage of assessment to fair market val. Tax Rate	
1929	\$19.53	30 per cent	\$4.42
1930	\$7.84	30 per cent	4.23
1931	19.76	30 per cent	4.50
1932	19.64	30 per cent	4.015
1933	18.26	30 per cent	2.965

The application further stated that “as a whole the physical condition of the project is in good shape.”

\$70,000 of the second issue of bonds were sold to J. R. Mason & Co. and M. H. Lewis of San Francisco, at \$97 and accrued interest per \$100 net to the district.

The application further gave a history of the default in interest and negotiations with the Bondholders Protective Committee, and stated the proposal for the issuance of refunding bonds offered as security for the loan, and stated:

“Interest Default. On July 1st, 1932, interest in the sum of \$14,340.00 fell due. The money in the Bond Interest Fund at that time was insufficient to pay said interest in full and interest coupons were paid as provided by the California Irrigation District Act in the

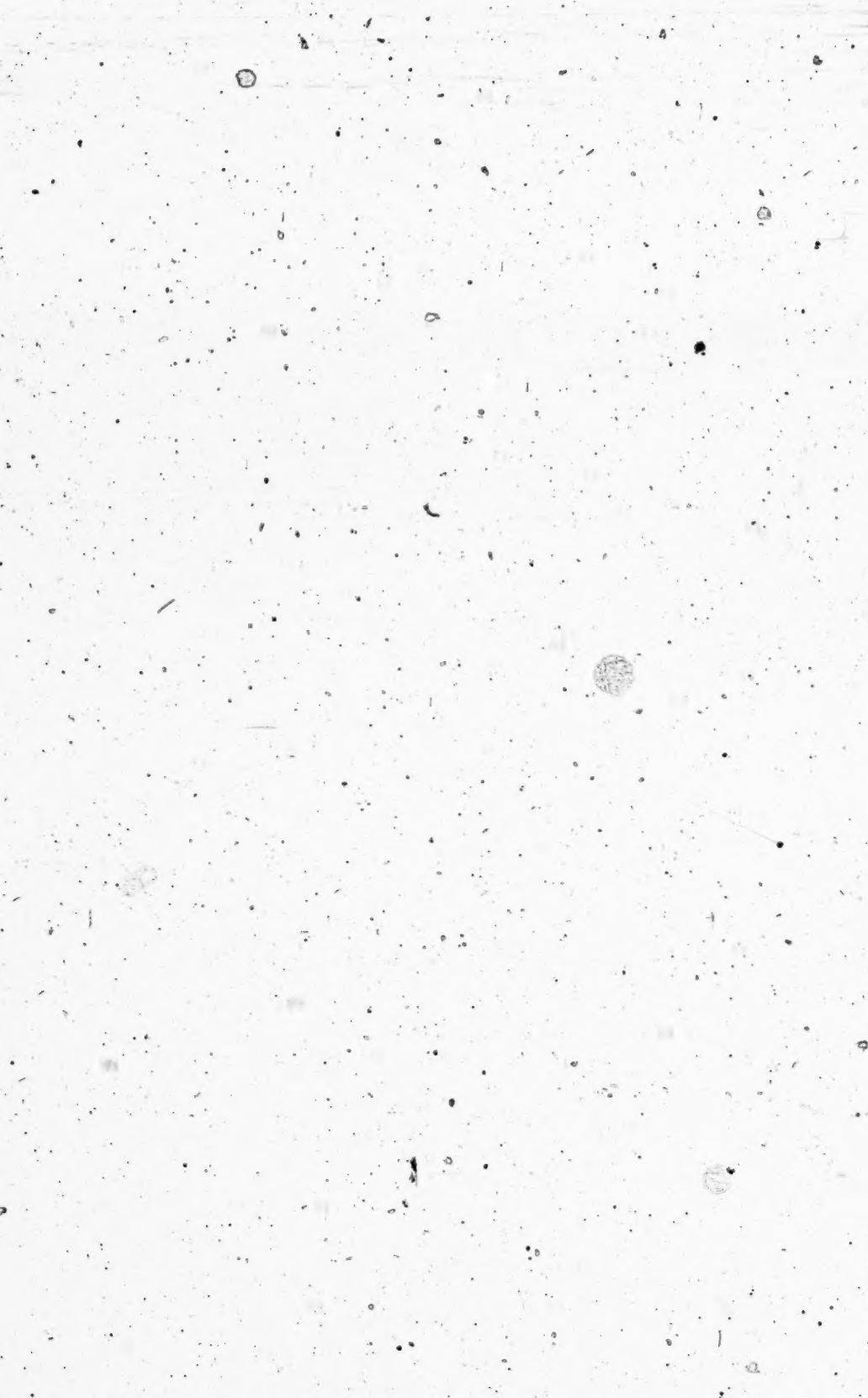
order in which they were presented as long as money was available, and the remaining coupons of that maturity were registered as presented and the registered coupons paid off as fast as money become available for that purpose. All of the July 1st, 1932, coupon maturities have been paid except approximately \$1250.00, and there is impounded in the First National Bank of Chico under said receivership sufficient money in the Bond Interest Fund to pay in full all of the remaining July 1st, 1932 interest coupons if and when said funds are received [97] from the receiver of said bank.

A like interest payment of \$14,340.00 fell due on January 1st, 1933 and on July 1st, 1933. In the spring of 1933 a Bondholders Protective Committee was formed, more fully referred to hereafter, and an agreement has been entered into between the district and the Bondholders Protective Committee under which the committee has agreed to accept payment at the rate of two per cent. per annum instead of six per cent. on all interest coupons controlled by them maturing in 1933 and 1934, and pursuant to this arrangement the district has paid to the Bondholders Protective Committee money to take up all interest coupons maturing January 1st, 1933, and under said agreement are required to pay the July 1st, 1933 coupons about January 1st, 1934, and present indications are that it will be possible for the district to meet these

interest payments under the agreement with the said committee."

"(c). The Bondholders Committee have made a considerable investigation of the affairs of the district and have determined not to ask at this time for a deposit of bonds but have asked for a deposit of interest coupons maturing in 1933 and 1934, and we are advised by the secretary of the Bondholders Committee that coupons of those maturities have either been actually deposited or the holders thereof have signified their agreement to cooperate with and abide by the decision of the committee, representing about seventy-five per cent. of the total outstanding bonds, and that they are in touch with most of the remaining bondholders and believe that practically all of them will abide by any decision which may be reached by the committee, and we anticipate no serious difficulty in reaching a fair basis of adjustment with the committee and all bondholders."

There followed financial statements prepared from the books of the district: [98]



PARADISE IRRIGATION DISTRICT

ASSETS AND LIABILITIES, comparative as of
December 31, 1929 to 1932, and November 30, 1933

ASSETS

	1929	1930	1931	1932	Nov. 30 1933
Cash in treasury					
General Fund	3,210.45				1,782.60
Bond Fund	10,127.37				3,573.13
Construction Fund	26,815.78				9,500.00
	40,153.60	29,676.05	22,348.11	17,408.31	14,855.73
Materials, Staves & wire, for repairs to pipe	150.00	150.00	150.00	150.00	1,000.00
Equipment, Office furnishings	1,019.97	1,019.97	1,019.97	1,019.97	1,019.97
Transit and level	485.00	485.00	485.00	485.00	485.00
Auto; trucks (2) rdstr.	852.58	1,102.58	900.00	505.00	305.00
Concrete Mixer (1923)	365.00	365.00	365	365	365
Pump & Motor (1929)	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00
Shop Equip. & Tools	200.00	200.00	200	200	200
	3,722.55	4,972.55	4,769.97	4,374.97	4,174.97
Buildings, Office					
—with vault (1922)	1,809.12	1,809.12	1,809.12	1,809.12	1,809.12
Land	125.00	125.00	125.00	125.00	125.00
Shop (1922-1923)	300.00	500.00	500.00	500.00	600.00
	2,234.12	2,434.12	2,434.12	2,434.12	2,534.12
Fixed Capital					
Magalia reservoir	176,918.67	179,909.29	179,909.29	179,909.29	179,909.29
Main Canal	26,936.82	26,936.82	26,936.82	26,936.82	26,936.82
Signal System	351.57	351.57	351.57	351.57	351.57
Distribution System	244,535.29	244,535.29	244,535.29	244,535.29	244,535.29
	448,742.35	451,732.97	451,732.97	451,732.97	451,732.97
Total tangible property	496,002.62	488,965.59	481,435.17	476,101.37	474,297.79

LAND AND ASSESSMENT LIENS

Certificates of sale, prior years deeded 2667 A	38,000.00	51,000.00	67,400.00	67,400.00	67,400.00
Assessments Receivable 1932—4865 Acres				31,182.66	19,297.75
Assessments receivable 1933 (delinq.)					16,035.24
Water tolls receivable (Dec. 26, 1933)					461.70

LIABILITIES

Unmatured Bonded Indebtedness					
First issue	350,000.00	350,000.00	350,000.00	350,000.00	350,000.00
Second issue	134,000.00	131,000.00	129,000.00	127,000.00	125,000.00
Matured bonds unpaid				1,000.00	3,000.00
Second issue		30.00	120.00	9,285.00	60.00
Bond interest matured unpaid					2,160.00
					14,340.00
					14,340.00
					30,900.00
Warrants—none					
Accounts payable—negligible					9,177.00
Interest accrued on registered bond coupons—not accounted					21,723.00
	484,000.00	481,030.00	479,120.00	487,285.00	499,723.00

Note: Property listed at original cash cost except automobile and small equipment; Magalia reservoir, dam, canal, shown at actual cost of construction with subsequent improvements, charges for bond discount and interest on registered warrants *eliminated*. Distribution system consists principally of wood stave pipe line, original cost only of labor, materials, and engineering is shown; much work in later years has been paid from current funds, maintenance and replacement has restored 22% of the pipe lines to a condition deemed better than when first installed.

Allowance for depreciation is not a legal charge in an irrigation district in California, and none has been accounted.

Certified by John Brereton, Public Accountant, December 14, 1933.



VIII.

(c) Water Shut Off for Nonpayment of Bills.

Prior to the year 1933 this district did not make any charge for water used, all monies for the operation of the district being raised by ad valorem taxes, and water was distributed to the landowners based upon the amount of their taxes as provided in Section 18 of the California Irrigation District Act.

Commencing with the irrigation season for the year 1933, the district for the first time adopted a system of water tolls; and during that season water was shut off on 196 acres of land because of non-payment of tolls. Toll charges were paid and service restored to all except 102 acres of this land, and at the present time 102 acres within the district are shut off because of non-payment of water tolls.

The application concluded:

State of California,
County of Butte—ss.

H. S. Clewett makes oath and says that he is the secretary of Paradise Irrigation District; that he has carefully examined each and all of the statements contained in the foregoing application and in the exhibits and other data attached thereto or submitted therewith; that such statements are true and correct to the best of his knowledge and belief; that such ap-

plication is made with the approval and at the direction of the board of directors of said applicant, as appears by resolution duly adopted at a meeting thereof, a certified copy of which is attached to such application, said meeting having been held at Paradise, California, on the 18 day of December, 1933, and that he is the person who has been authorized by such resolution to execute said application.

H. S. CLEWETT

Subscribed and sworn to before me, a Notary Public in and for the state and county above named, this day of December, 1933.

(N. P. Seal) ELSIE B. HAMBURGER

Notary Public in and for the County of Butte,
State of California.

My commission expires June 12, 1936.

PETITIONER'S EXHIBIT 2

✓ The Petitioner's Exhibit 2 was a resolution of the Reconstruction Finance Corporation adopted May 22nd, 1934, granting a loan to the district in a sum not exceeding \$252,500, providing for the deposit of the old bonds, making provisions for [99] payments on the loan, reports to the Reconstruction Finance Corporation, and other things, and contained the following:

“Whereas this Corporation has caused an appraisal to be made of the property securing

or underlying the Old Securities and has determined that the project of the District is economically sound, and now desires to make a loan to enable said District to reduce and re-finance all or by far the greater part of such Existing Debt on the basis of payments to holders of its Old Securities, or to Committees or other representatives of such holders, at the rates herein set forth.

Now, therefore, be it

Resolved, that there is hereby authorized a loan of not exceeding \$252,500.00, to or for the benefit of said District, subject, however, to the following terms and conditions:

3. Payments on Deposited Securities. The amounts to be loaned by this Corporation hereunder shall be sufficient to provide for payments of different amounts of money on account of the Deposited Securities, as follows:

(a) 52.521 cents for each dollar of principal amount of Deposited Securities, provided that all of the Old Securities shall have been deposited at the time when this Corporation makes its first loan hereunder.

(b) 52.521 cents for each dollar principal amount of such Deposited Securities, in case the District is unable to procure the deposit of all of such Old Securities but shall procure the deposit of such large proportion thereof as shall be required or approved by the Division Chief.

(c) 50.521 cents for each dollar principal amount of Old Securities that are not thus deposited at the time when the first loan is made pursuant to the provisions of subparagraph (b) of this section, but which are subsequently deposited within such time or times as may be fixed or approved by the Division Chief.

Each deposited Security shall be accompanied by such of its appurtenant coupons, if any, representing interest accrued on or before January 1, 1934, as may be required by the Division Chief and shall be also accompanied by all coupons representing interest payable thereon after such date. In case any such security shall not be accompanied by any coupon required by the Division Chief representing interest on or before the aforesaid date, the amount payable thereon shall be reduced in such amount as may be determined by the Division Chief, but such reduction shall not be less than 46.67 cents for each dollar of the face amount of such missing coupons. In case any Old Securities shall be presented with any coupons missing that mature after the aforesaid date, the Division Chief may refuse to accept [100] the same, or if any security is accepted there shall be deducted from the amount to be paid on account thereof a sum equal to the full face amount of such missing coupons.

In case any Old Security shall be deposited without being accompanied by all the required coupons and if because of such missing coupons reductions are made in the amounts payable on account of such Old Security, but thereafter such missing coupons are deposited within such time or times as may be prescribed or approved by the Division Chief, there shall be paid on account of such coupons subsequently deposited amounts exactly equal to the sums which were originally deducted from the sum paid on account of such Old Security to which such coupons appertained.

5. **Loan. How Effected.** The loan authorized by this Resolution shall be effected in such manner as shall be satisfactory to the Division Chief and to Counsel for the Corporation, and unless they shall otherwise direct, disbursement of such loan shall be conditioned upon the District duly authorizing an issue of 4% bonds (hereinafter called "New Bonds") having a principal amount equal to the amount so disbursed. Among the ways for effecting such loan are the following:"

It was further stipulated that some of the coupons of January 1, 1934, were attached to the bonds when they were turned in to the Federal Reserve Bank, the depository for the R.F.C. That on July 3, 1934, the Directors of the District adopted a resolution authorizing the district to submit the

proposed refunding plan to the California District Securities Commission, and on the same date the Directors adopted a plan for refinancing of the bonds of the District in accordance with the resolution of the R.F.C. A copy of resolutions of the Directors of the District adopting the refunding plan were read into evidence, as Petitioner's Exhibits 3b and 3c; also contained therein was authorization to apply to the California District Securities Commission for approval thereof. Petitioner's Exhibit 3d is a resolution of the Board of the District calling an election within the District for the **APPROVAL OR REJECTION OF THE PLAN**, and sets forth Order No. 13 of the California Districts Securities Commission approving the plan. It was stipulated the last mentioned order was adopted by said Commission August 10, 1934.

PETITIONER'S EXHIBIT 3a

Petitioner's Exhibit 3a was a resolution of the board of directors of the district adopted June 12th, 1934, accepting the loan from the Reconstruction Finance Corporation, and authorizing the president and secretary to arrange for a depository for the deposit of the outstanding bonds of the district and to do all other things necessary to consummate the loan.

It was stipulated that the election was held September 28th, 1934, and carried and that the proposition voted upon was [67] as follows, to wit:

Proposition: Shall the Paradise Irrigation District enter into and execute a contract with the Reconstruction Finance Corporation, an agency of the United States of America, providing for the issuance of refunding bonds and complying with the requirements of said Corporation, including among other things provisions for the levy and collection within said District of assessments that will be sufficient in amount to pay such bonds together with interest thereon when the same fall due and also to create a reserve fund; and shall said District issue refunding bonds in the principal amount of \$252,500 for the purpose of reducing and refinancing outstanding indebtedness of said District, under and pursuant to and in accordance with the resolution adopted by the Reconstruction Finance Corporation dated May 22, 1934, and accepted by the Board of Directors of said District on June 12, 1934, and pursuant to the refunding plan adopted by the Board of Directors of said District on August 7, 1934, and Order No. 13 of the California Districts Securities Commission dated August 10, 1934, approving said plan and authorizing such refunding?

The resolution adopted November 6, 1934, authorizing the issuance of the refunding bonds and giving their form was received in evidence as Petitioner's Exhibit 3f. The copies of resolutions of the Board

of Directors of the District authorizing the District to enter into a contract with the Reconstruction Finance Corporation to effect said plan, both resolutions being adopted at a meeting of the Board held November 6, 1934, were introduced in evidence as Petitioner's Exhibits 3g and 3h, respectively, over objection of respondent that no proper foundation had been laid and that there was no authorization in the loan or in the vote of the people. Amongst the clauses contained in the contract authorized to be executed by Petitioner's Exhibit 3h, there appears in Sections 2 and 3 thereof the following:

2. Until the Old Securities acquired and held by the Corporation by reason of or in connection with such disbursements are exchanged for New Bonds issued by the District, or are otherwise refinanced as provided in said resolution, they shall at all times continue to be and constitute obligations of the District for the full face amount thereof. [68]

3. When all of the Old Securities are made available for refinancing and are acquired by the Corporation the reduction in the District's indebtedness will be effected to the extent and in the manner provided in said resolution authorizing said loan, and the parties hereto will do all acts and take all steps and proceedings necessary or appropriate to facilitate and accomplish expeditiously such result.

PETITIONER'S EXHIBIT 3i

Petitioner's Exhibit 3i was a resolution of the board of directors of the district adopted December 12, 1934, that the district enter into a contract with the Reconstruction Finance Corporation, providing that the district should issue and sell and the R. F. C. purchase not to exceed \$252,500 principal amount of refunding bonds, "together with the interest accrued thereon (if such interest is not adjusted at the option of the R. F. C. by a credit endorsement on the coupon) to the date of making a disbursement on the loan authorized herein; the proceeds of the bonds to be used for the purpose of refunding the outstanding in- [101] indebtedness of said Borrower and to pay costs incident to such refinancing; provided, however, that if R. F. C. should make a temporary loan to the creditors of said Borrower or their agent, and thereby or otherwise acquire legal title to all, or any part of the indebtedness of said Borrower, such refunding bonds, or any part thereof, may be acquired by delivering, for cancellation to said Borrower, a like or greater principal amount of the bonds of said Borrower, and by the cancellation of the other indebtedness held by R. F. C., and provided, further, that R. F. C. may, in its discretion, keep any part of said indebtedness alive, for the purpose of maintaining a parity between itself and the holders of indebtedness of said Borrower who have not agreed to enter into the refinancing scheme of said Borrower, or for any other purpose."

The resolution further provided that the district will levy and collect sufficient assessments to pay operation expenses and also to establish and maintain a reserve fund for the principal and interest of the refunding bonds, and that various reports will be made to the R. F. C., and that the R. F. C. should at all time have full access to and copies of all reports and files of the district.

Under date of December 24, 1934, the Board adopted a resolution amending its resolution of June 12, 1934, because the R. F. C. had amended paragraph 3 of its resolution of May 22, 1934, which resolution of the Board was introduced in evidence as Petitioner's Exhibit 3j.

Negotiations were carried on between the District and the bondholders, looking toward a composition of the district's bonded indebtedness. A bondholders committee was formed. Many letters passed between the district and the bondholders, and between the district and the R.F.C. The consummation of these transactions was that approximately 93% of the owners of the bonded indebtedness of the district agreed to the plan; the only dissenting bondholder was J. R. Mason, who owned \$29,000 of the outstanding bonds. In the agreement entered into between the district and the bondholders committee, the latter being represented by George Stephens, as executive secretary, the said committee adopting the name "Bondholders Protective Committee", the

district made the offer for a composition in accordance with the plan. The district sent to the holders of its bonds a written offer in accordance with the plan, a copy of which was introduced in evidence as Respondent's Exhibit No. 3.

RESPONDENT'S EXHIBIT 3:

Respondent's Exhibit 3 was a letter dated July 1, 1934, directed to the holders of bonds of the district and was sent out by the Paradise Irrigation District. It stated that a loan had been authorized by the R. F. C. in the sum of \$252,500, and stated:

“The Reconstruction Finance Corporation, in its resolution authorizing the loan, requires that the basis of settlement shall be at the rate of \$525.21 on each \$1000.00 par value bond (\$262.60 on each \$500.00 bond), including all unpaid delinquent interest coupons, which coupons must be deposited with the bonds before payment can be made.

Nearly all of the interest falling due July 1st, 1932, has been paid by the District, and in order that all holders of bonds may as nearly as possible be placed on an equal footing, the District will arrange to meet the balance of the unpaid interest maturing on that date, but all unpaid coupons maturing subsequent to that date must be turned in with the bonds at the flat price. If you have deposited your coupons with the Bondholders' Committee they will complete the

deposit of the coupons for you upon your sending to the depository the bonds and the coupons not sent to the committee. If you hold any coupons maturing July 1st, 1932, you should continue to hold them until advised to send them to the district for payment."

The letter further set out the increasing delinquencies in the district and asked for the deposit of bonds with the depository at Chico, California, and further stated:

"We would further call your attention to the fact that under the Resolution of the Reconstruction Finance Corporation the corporation has the right **TO MAKE A DISBURSEMENT TO THOSE WHO HAVE DEPOSITED** their securities **WHENEVER** the amount so deposited shall be **ACCEPTABLE** to the Chief of the Division of the Reconstruction Finance Corporation, and that after such initial disbursement any securities which may be **LATER** deposited will **ONLY** be paid for at the rate of \$505.21 per \$1000.00 par value bond; and it is therefore to your advantage to deposit your securities promptly so that you may receive the **HIGHER** price."

Respondent's Exhibit 3 also included a letter dated October 9, 1934, to non-depositing bondholders of the district, [119] signed by H. S. Clewett, secretary of the Paradise Irrigation District, and stating in part:

° "We are communicating with you at this time to advise you of the status of the deposit of bonds on the refinancing program of the Paradise Irrigation District and of the closing date within which time deposit of bonds can be accepted to share in the first disbursement under the LOAN from the Reconstruction Finance Corporation.

All except five individual bondholders—holding a total of 36 bonds—out of 476 outstanding have either actually deposited their bonds or have definitely agreed to the terms of the settlement in acceptance of this refinancing program, which means that the holders of over 92 per cent of the outstanding bonds have accepted the settlement.

The Paradise Irrigation District has held its election for the authorization of new bonds to the Reconstruction Finance Corporation and the acceptance of the refinancing program, at which election the new bonds were authorized by a vote of 436 to 10, and we are now in a position, as soon as the necessary matters of procedure are gone through with, TO ISSUE OUR NEW BONDS to the Reconstruction Finance Corporation and have it deposit the money with the depository TO MAKE SETTLEMENT WITH THE PRESENT BOND-HOLDERS in accordance with the provisions of the refinancing program.

The regulations of the Reconstruction Finance Corporation provide that the refinanc-

ing program may be declared effective and a disbursement made to the depositing bondholders at any time WHEN the DIVISION CHIEF shall deem that such a large PROPORTION of securities has been deposited as will SATISFACTORILY ACCOMPLISH THE PURPOSE of authorizing the loan, and that in that event on any securities which are later deposited only 50.521 cents per dollar shall be paid instead of 52.521 cents per dollar on securities deposited before the making of the first disbursement, or a difference of \$20.00 per \$1000.00 bond.

We have therefore set October the 25th, 1934, as the final date within which bonds may be deposited with the depositary, Bank of America at Chico, California, to be included in the first report and share in the first disbursement at the higher rate; and we are sending this communication to all bondholders who have not actually deposited their bonds at this time, even though they may have entered into a definite agreement to so deposit, in order that they may be thoroughly advised as to the situation and act accordingly."

In the matter of the effecting of the composition with the approximate 93% of consenting bondholders, no money was advanced by the R.F.C. to

the district, nor did the district dispense any of the money used by the R.F.C. in the payment to the bondholders of the composition sum. All money [69] used to pay the composition figure was sent by the R.F.C. to the Federal Reserve Bank of San Francisco, with instructions by letter dated December 17, 1934, to purchase said bonds at the composition figure, and they were so purchased by the Federal Reserve Bank of San Francisco under such instruction, and are now in the possession of the Federal Reserve Bank of San Francisco, and are being held by it for the R.F.C., and they have never been in the possession of petitioner.

Just prior to the consenting bondholders depositing their bonds with the escrow holder, the bondholders Protective Committee, by its executive secretary, George Stephens, notified such bondholders of the final consummation of negotiations of the committee with the district, a copy of his letter to them was admitted in evidence as Petitioner's Exhibit No. 7.

It was stipulated that the district requested that the bonds held by the R. F. C. and purchased as above set forth be registered under the Statute of 1913 (Ch. 23) and they were registered in the name of the R. F. C. on July 1, 1936.

Upon January 14, 1936, Paradise Irrigation District filed in the present court under section 78, 79 and 80 of the Bankruptcy Act of the U. S., being cause No. 6648, a petition, which set forth that the district was insolvent and unable to pay its debts

as they mature, and desired to effect a composition of its bonded indebtedness. The debts alleged in such petition were the same bond issues as are set forth in the instant case. The plan therein was to pay 52.521 cents per dollar of the principal amount of the bonds without deduction for coupons which had been paid. The refund bonds referred to therein were the same bonds that were voted upon on September 28, 1934; in such case the respondent herein, J. R. Mason, appeared and filed an answer setting up the unconstitutionality of the Act and substantially the same defenses that he has set [70] up in this pleading. He also filed a petition to dismiss, and this court on October 28, 1936, entered a judgment of dismissal which has never been appealed from and is now final, a copy of which judgment of dismissal was admitted in evidence as

RESPONDENT'S EXHIBIT No. 4,

and is as follows:

In the District Court of the United States of
America in and for the Northern District
of California Northern Division

No. 6648.

In the Matter of the Application of Paradise
Irrigation District, an Irrigation District
Organized Under the Laws of the State of
California, for an Order Authorizing the
Readjustment and Settlement of Its In-
debtedness.

JUDGMENT OF DISMISSAL

It appearing to the Court that this is a proceeding in bankruptcy initiated by the Paradise Irrigation District, an irrigation district organized under the laws of the State of California under the provisions of paragraphs 78 to 80 of the Bankruptcy Act, added by act May 24th, 1934, 11 U.S.C.A., Sections 301 to 303, and the respondents, J. R. Mason and E. Masten, having moved the Court to dismiss the petition and proceedings herein, and it appearing to the Court that said provisions of the Bankruptcy Act of 1898 are unconstitutional and void and that the Court is without jurisdiction to entertain the petition for readjustment and settlement of the indebtedness of said Paradise Irrigation District, and good cause appearing therefor,

It is ordered, adjudged and decreed that the petition for authority to effect a plan of debt readjustment of said Irrigation District be and the same hereby is dismissed, and the Clerk of this Court is directed to enter the dismissal thereof of record.

Dated: October 28th, 1936.

HAROLD LOUDERBACK

United States District Judge.

Thereafter and upon the day of, 19....., and under Chapter 10 of the National Bankruptcy Laws of the United States, as amended by Public

No. 302 of the 75th Congress, and approved August 16, 1937, Paradise Irrigation District filed the present petition in the above court. Prior thereto, and upon September 27, 1937, the Board of Directors of Paradise Irrigation District, by resolution adopted a plan for composition and readjustment of its debts, a copy of which plan is attached to the present petition, and is marked Exhibit A, and is hereby referred to. That the plan set forth therein so [71] adopted for the composition of the district's indebtedness, is as follows, to-wit:

The district proposes a composition of its present outstanding indebtedness by paying the holders thereof, in cash, the sum of 52.521 cents for each dollar of the principal amount of their respective bonds, exclusive of interest; that if any bond be presented with any appurtenant interest coupon maturing on or before July 1, 1934, missing, there shall be deducted from the amount payable thereon 45.67 cents for each dollar of the face amount of such missing coupon, and if any bond be presented with any appurtenant unpaid interest coupon maturing subsequent to July 1, 1934, missing, there shall be deducted from the amount payable thereon a sum equal to the full face amount of such missing coupon. Provided, however, that where deductions are made on account of missing coupons and such missing coupons are afterward presented for payment, the holder thereof shall be paid the sum deducted from the amount pay-

able to the holder of the bond on account of the missing coupon; that such payments will be made from the proceeds of a loan authorized by the Reconstruction Finance Corporation and which has been or will be disbursed to or for the benefit of the district for the purpose of reducing and refinancing its indebtedness.

To evidence such loan the district further proposes to issue and deliver to the Reconstruction Finance Corporation its new or refunding serial bonds in principal amount equal to the agreed amounts disbursed therefrom for the purposes mentioned, including the cost and expenses not to exceed \$2,500 incurred by the district in connection with its debt readjustment, together with 4% interest on all such disbursements from the date thereof until the new or refunding bonds evidencing same are issued and delivered to the Reconstruction Finance Corporation as authorized by an election held by the district on the 28th day of September, 1934.

The new or refunding serial bonds to be issued and delivered by the district to the Reconstruction Finance Corporation will bear interest from date until paid at the rate of 4% per annum, payable semiannually; the first installment of principal will mature three years after date thereof, and thereafter the remaining installments of principal will mature annually according to a schedule therefor which is acceptable to the Reconstruction Finance Corporation.

Or, in the alternative, the details of the above plan may be reasonably modified in such particulars as the Court deems just and proper, and as may be acceptable to the Reconstruction Finance Corporation and the president and secretary of the district.

That also prior to the filing of said petition the Reconstruction Finance Corporation, upon October 28, 1937, adopted its resolution accepting the latter plan for composition [72] and readjustment of the indebtedness of said district, a copy of which said resolution is attached to the petition herein and is marked Exhibit B.

That also attached to said petition and marked Exhibit C is a list of creditors, (bondholders) of the district; said list shows that J. R. Mason, Mrs. Eugenia M. Masten and James H. Jordan Company own \$29,000 of said bonded indebtedness, and the R. F. C. \$447,000 worth. It was stipulated in court that J. R. Mason (who always owned \$26,000 thereof) had succeeded to the interest of the others in and to the said \$29,000 worth of bonds, and is the sole owner thereof; said list disclosed that said J. R. Mason had not accepted the plan of composition, and that the R. F. C. had.

The petition of the district was heard March 17, 1939.

JAMES B. THOMPSON

was called as a witness for petitioner and testified that he had been superintendent and secretary of the district for nearly three years and had resided within the district for a period of 6 or 7 months prior thereto. Petitioner's Exhibit 4 was prepared by the witness and was received in evidence, and consisted of a statement of the district's delinquent list from 1926 to 1938. The reason that the delinquencies decreased from 1934 to 1938 was because since 1934 the district only levied 4% for interest on the amount paid out by the R. F. C. to purchase the approximate 93% of the district's bonds. The witness had prepared a statement entitled "Resume of Annual Reports of the District", which was introduced as Petitioner's Exhibit 5. This represents the secretary's report as required by law annually to the Board covering the years 1928 to and including 1938. The report, Exhibit No. 5, discloses the tax deeded land to the district. Such tax deeded land at the time of the trial was 4,319 acres; there are 11,250 acres in the [73] district; this Exhibit shows the repair to the pipe lines required through breaking. The district serves water through a wooden pipe line. The condition of this pipe system is extremely bad. It is practically all a wooden staved pipe line and certain of the soil in the district is very injurious to the steel winding bands that hold the wood staves together, and they corrode and break through and the pipe breaks must be repaired; also certain staves have decayed during the

(Testimony of James B. Thompson.)

approximate 20 years since its installation. This condition will get worse. The entire system will require replacement. The least estimate of the charge for replacement is \$132,000.

At this point counsel for petitioner asked counsel for respondent if he would stipulate that the district comes within the purview of the Municipal Bankruptcy Act. Counsel for respondent stated that in the first place he did not concede that the assets of the district are less than its liabilities.

The witness proceeded and stated that the maximum storage capacity of the district is 3012 acre feet; the average flow of Little Butte Creek which fills the reservoir is 1200 acre feet; the average annual amount of water served consumers is 1293 acre feet; loss of water to the district through breaks and leakage, excluding the dam, is 1204 acre feet annually. In 1937 the district itself spent in rehabilitation work \$2,327.25, and a W.P.A. project that overlapped with the district's work, expended \$10,374.00 additional. A levy of taxes was made in the district for 1937, calculated to yield \$11,477.00.

At this time counsel for respondent presented a claim filed by J. R. Mason covering his bonds, and it was stipulated that items contained in said claim are correct.

The cost of water delivered in 1937 for the acreage determined irrigated by the R.F.C., was \$28.80 per acre foot. [74] An acre foot of water is enough to cover one acre of land one foot in depth. A state-

(Testimony of James B. Thompson.)

ment prepared by the witness showing repairs to the distributing system from 1928 to 1938 was received in evidence as Petitioner's Exhibit 6.

Of the 4,319 acres of tax deeded land possessed by the district, from 160 to 170 parcels ranging from a half acre to maybe 10 acres have been sold by the district under contract. Considerably more than one-half of the land in the district does not have water service. Delinquency in payments has been to a very large extent delinquencies in assessments on land to which there is no water available. The price for which the district sold its tax deeded lands was, in all instances except possibly two or three, more than the amount of taxes for which title was taken. The re-selling of land by the district has been unsatisfactory, owing to inability to move enough of it. The money that came in from sale of lands was put in the general fund, and used in operation and maintenance and carrying on the district's business. It is not a fact that a large part of such money was put into the reserve fund under the R.F.C. contract. \$1958.29 was taken from the reserve fund to pay some interest coupons of Mr. Mason and this was returned to the R.F.C. reserve fund from the general fund. The allocations made from the tax levy as directed by the Board of Directors, varies. At present \$3.75 assessment per \$100 valuation is assessed for bond and interest servicing.

The witness was asked if in the last three or four years the levy for bond principal and interest was

(Testimony of James B. Thompson.)

based upon the original bond issue or upon the amount that the district owed the R.F.C., and the witness answered that it was based upon the amount owed the R.F.C. Counsel for petitioner moved that the last answer go out to permit his objection upon the [75] ground it calls for the opinion and conclusion of the witness, as the question was upon the basis of the amount owed the R.F.C. and that such was calling for the opinion and conclusion of the witness as to what is owed, whether it is the full amount of the original bonds or the amount of the R. F. C. advanced, and that that was for the court to decide. In ruling thereon the court said that he supposed that is calling for the witness's conclusion, but that he is not deciding for the court.

A toll system for use of water was started in the district in about 1933, and after that a portion of the district expenses was met by the water toll and the levy for tax purposes was reduced, which explains the drop in the assessment as shown upon the Exhibit 5 to \$359,000.

The witness stated he was familiar with the provision in the contract of the district with the R. F. C. to the effect that old securities acquired and held by the R. F. C., until exchanged for new bonds, or otherwise refinanced as provided by the R. F. C. resolution, (Petitioner's Exhibit 2,) should at all times continue to be and constitute obligations of the district for the full face amount thereof, and the reason they budgeted for \$233,000 in bonds in-

(Testimony of James B. Thompson.)

stead of their full face value of \$476,000 was because of an agreement with the R. F. C.

The minimum price of the tax deeded lands sold by the district was \$2.50 per acre, and the maximum \$50.00 per acre. The greater part was sold for \$40.00 per acre.

The witness was asked by counsel for respondent:

“Do you regard the plan of the district after it may have been put into effect as feasible in that the district will be able now in the present condition of its works to collect sufficient money to pay the interest to the R. F. C. on the new refunding bonds?”

The objection of counsel for petitioner to the question was sustained. [76]

HOWARD S. CLEWETT

was called as a witness for petitioner and testified that he had been secretary of the district from 1933 to March of 1935, and that he lived in the district continuously since 1930, but owned land there since 1921. That he had been to the district four of five times between 1921 and 1930. That the distributing system of the district consists of a redwood stave pipe line bound together with corrugated wire, and was installed around 1918 or 1919 and is in bad condition, in that the binding of the wire would

(Testimony of Howard S. Clewett.)

break and cause leaks and the line has to be dug up and re-wound or re-bound with wire. During the time he was secretary the water loss to the district was about one-third. That would be about 1000 acre feet a season. 2500 to 3000 acres are the maximum irrigated land at the present time; this was because there is a large part of the district in which there is no pipe line; there is an undeveloped tract through the district which is not developed because of water conditions; also there are non-users of water where water is available, one of the reasons being the high cost of water; the cost is prohibitive for certain purposes because you cannot produce the crop which when you count your labor and all expenses, and the cost of the water, would pay any profit.

The witness testified he is at present a Justice of the Peace of Paradise, which is in the district, and is also an attorney at law, and a member of the Chico Board of Education in the Chico High School District, and in such capacities has observed the average family within the district; the average income of a family within the district does not exceed \$75.00 a month; the average grocery bill is from \$40 to \$45 a month and there are other essentials to be paid for; automobile expense is a necessity as the district is located 17 miles from Chico and 21 miles from Oroville, and the majority of the men when they work out go either to Sterling City, 13 miles away, or [77] DeSabra, which is about 7 or 8

(Testimony of Howard S. Clewett.)

miles away, or down into the valley, and some kind of transportation is necessary as there is no public transportation of any kind; also there is fuel to be paid for and lights; also doctor bills, dentist bills and clothing; these other essentials would run \$35 to \$40 a month, and there is nothing left after paying the essentials to pay either the irrigation district taxes or State and County taxes; that the Board of Education of which he is a member maintains a free lunch service for needy children for many come to school with no lunch. The maximum amount the district can pay annually in taxes is not to exceed \$10,000 a year.

Before the Bondholders Protective Committee entered into the arrangement to accept the plan of composition, its secretary, Mr. George Stephens, made many trips to the district; probably 15 or 20; this Committee recommended to its members they accept a settlement according to the plan.

There was thereupon introduced Petitioner's Exhibit No. 7, which is a letter from the Bondholders Protective Committee to its members, which recommends acceptance of the plan, and stated: [78]

The demands of the old bond issue could not be met out of income strictly from the district and separately from the income of the people from other sources that they may have. They could be met for a time until the principal payments began to pile up. Under the old bond issue we would be required to pay each year something like \$40,000 principal and interest. Up until 1927 and 1928 they

(Testimony of Howard S. Clewett.)

were able to meet the requirements because there were small principal payments and the general conditions were better, as to income. They obtained at least double the price for the produce raised over what they do now and higher wages and more work. In his opinion if there had never been a depression we would have been unable to meet the maturity under the old bond issues, because they accumulated too fast.

PETITIONER'S EXHIBIT 7.

Petitioner's Exhibit 7 is a letter from the Bondholders' Protective Committee to its members, which recommended acceptance of the plan, and stated:

"The District will pay through funds obtained from the R. F. C. the sum of \$525.21 per \$1000 bond (\$262.60 per \$500.00 bond) delivered to the depository, accompanied by January 1933 and all subsequent coupons, plus interest at 4% on the purchase price from July 1, 1934, until the money is paid, or until interest to the Government begins. Coupons that have been or will be turned in to the District through Committee will be considered as accompanying bonds:

The District will pay to Committee against its expenses in getting bondholders together a sum equal to \$10.00 per coupon for coupons of January and July 1934 maturity held by the Committee." [102]

(Testimony of Howard S. Clewett.)

Respondent's Exhibit No. 1 was received in evidence, being a letter of July 2nd, 1934, to depositing bondholders.

RESPONDENT'S EXHIBIT 1:

Respondent's Exhibit 1 was a notice sent by the Bondholders Protective Committee dated July 2nd, 1934, directed to depositing bondholders and stating in part:

"The Bank of America, Chico, California, has been selected as Depositary and the District is today sending you papers to be filled out in connection with the SALE OF BONDS TO THE DISTRICT against funds provided by the Reconstruction Finance Corporation.

Bonds of those who deposited their coupons with the Committee should go forward with July 1936 and subsequent coupons attached. But the pink coupon receipts issued by Committee should be detached and held by bondholders against a further disbursement through the Committee when its business is concluded."

EDWARD P. SHIER

was called as a witness for petitioner and testified: He is president of the Board of Directors of the District and his occupation is minister of the Gospel, and part time farmer. He has owned property within the District for about 12 years. Most of the land in the District is on side hills and is Aiken

(Testimony of Edward P. Shier.)

clay loam, very porous soil, lacking in fertilizer elements, but subject to cultivation with the addition of fertilizer and a great deal of water. Default was due to the fact that the land is held in large areas with only a small part in production, so a considerable area became delinquent when they could not secure the money from the land to pay their taxes. The District has sufficient water to get along with the 3000 acres now under cultivation.

Apples, some walnuts, some peaches, small berry patches, and considerable potatoes in commercial quantities, grapes and almonds, are produced in the District. To properly [79] irrigate the 3000 acres under cultivation would require about 6000 acre feet of water. There is available approximately 4200 or 4300 acre feet. More land would be cultivated if it were not for the cost of \$100 to \$200 an acre to clear the land from stumps and brush. Probably about 2000 acres in the district cannot be cultivated. He estimates average family income in the District to be less than \$900 a year. The amount required for family living is at least \$75 a month.

By providing sufficient fertilizer and adequate water through an overhead sprinkler system, very good results are obtained in growing truck crops, but the District is too far from the city to have more than a limited market at the present time.

As to future prospects, an active man can make a fair living at farming in the District. The witness negotiated for the purchase of some of the Dis-

(Testimony of Edward P. Shier.)

trict's bonds in 1931; bought one at 32 cents on the dollar.

From the average income of a family in the district there is not sufficient left with which to pay taxes, either State and County or irrigation and a great many families have paid such taxes at the expense of necessities that they should have had to keep them going as normal healthy people, and to become decent citizens. Many people only get the care of a doctor when there is an extreme need and are unable to pay the bills in many instances. A dentist bill is not incurred because they cannot pay a dollar.

From my experience, as a farmer over years it is my opinion as to the future of agriculture within Paradise Irrigation District that an active man, capable, can make a fair living, that is, wages for himself, farming there, that is the best prospect I can see there. I cannot see where there is any profit to be made. There is no product grown on the district that would [80] permit anyone producing that product to pay his own living expenses and pay his taxes to the district.

On cross-examination the witness testified that the land holdings in the District are from an acre to 80 or 100 acres. A good many people have come into the District in the last 8 years and have bought an acre to five acres for a home site. They work for wages when they can. The irrigation tax is about \$2.25 per acre. There are a great many one-acre places, and only a few that are really producing

(Testimony of Edward P. Shier.)

farms where there is a capacity of making a living off of the farm.

Correspondence between the Bondholders Committee and members was received in evidence as Respondent's Exhibit 2.

RESPONDENT'S EXHIBIT 2:

Respondents Exhibit 2 was a copy of a letter from George Stephens of the Bondholders Protective Committee to the members of the committee dated March 31, 1934, a carbon copy having been sent to J. R. Mason, respondent. This letter had attached to it a copy of a letter from D. B. Barnes written to the Deputy Land Bank Commissioner, Farm Credit Administration [117] Washington, D. C., stating among other things the following:

"One of the questions asked in that report was for a statement of the crop production for the year 1932, and a figure was submitted of 1083 acres producing in various crops almost entirely of deciduous fruits. We particularly stated, however, in that report that the major development of this district has been within the past five or six years and only a comparatively small percentage of the orchards have as yet reached the producing stage, and that report of course took no account of young orchards which had not as yet reached the stage of commercial production. The same report stated that the total acreage irrigated in the

(Testimony of Edward P. Shier.)

district was 3000 acres and not 1083 acres as appears in the bulletin.

Furthermore this report took into consideration only acreage which was considered as a commercial proposition and took no account of the very large number of instances of people maintaining their homes in the district and cultivating one or two or three acres as subsistence homesteads from which they were deriving a large part of their living but which could not be considered as farming upon a commercial scale.

The statement is made that the principal value of the district is as a summer home for people living in the valley where they spend the hottest part of the summer, and that it is probable that this development will be very gradual in the future, and that for some years to come the district will do well to hold its own in population and maintain its present development. **THIS IS NOT A FACT.** It is true that this district does have a value for that purpose, but that value is only a very minor part of the picture. The facts are that this district has had and is now having a **REMARKABLE AND CONSISTENT GROWTH** in population which has **CONTINUED ALL THROUGH WHAT** is generally known as the **DEPRESSION PERIOD** and is still continuing. No exact figures are available as to the present population, but there is no doubt but

(Testimony of Edward P. Shier.)

what the population has increased at least twenty per cent since the 1930 census and is steadily increasing, as is evidenced by the remarkable and sustained increase in Post Office receipts of the local Post Office shown by the statement of the Postmaster submitted herewith and indicating an increase in postal receipts from \$2246.64 for the calendar year 1929 to \$2930.98 for the calendar year 1933. The calendar year 1932 was even larger, owing to an extraordinary increase that year; but the statement submitted herewith shows a steady increase during the entire period. Also, during the past ten years the boxes on the rural route have increased from 150 to 340, and the length of the rural route has increased from 25 miles to 46 miles.

A further indication of growth in population is the fact that during the same period there has been in excess of forty new dwellings and business houses erected in the district, and there are practically no vacancies available anywhere in the district. The Pacific Gas and Electric Company, which serves the district with electricity, has had to make numerous extensions of its lines to serve increasing demands; and one of their [118] representatives made the statement a short time ago, at a Farm Center meeting here, that in proportion to population they had had a greater increase in the Paradise district than in any other district served by the company; and that company, as you know, serves practically all of Northern California."

IRVIN G. HAMMA

was called as a witness by petitioner and testified: That he has lived in the District since 1914. In 1918 and 1919 he was a Director. The District cannot, from the products grown there, pay the interest upon the original bonded indebtedness, and the District requires the replacement of its distributing system. He would say that about 15% of the people in the District are WPA workers making \$44 a month. Some make around \$90 to \$100 a month, but \$75 would be average, in his opinion. An average family having an average income has nothing left with which to pay taxes; he attributed delinquencies in payment of district taxes to inability to make a living there. There is not sufficient water for needs of those who have irrigated crops; he has a forty-acre ranch and raises apples mainly; he has not sufficient water to produce a good crop; there are many people who do not use water because of the cost; he is one of them; since 1930 he has not used the water he should have because he did not get any returns on his apples; he operated at a loss; he was in the grocery business for 15 years in the Paradise district. The average grocery bill for a family of 4 or 5 people would be \$45. Other [81] necessities of life, including an automobile, would add 30 to 35 dollars a month. He operates a 40 acre ranch, raising mostly apples, but he is not able to get sufficient water for a good crop. Returns did not warrant using more water. His water for 20 acres last year cost him a little over \$100. His county taxes on

(Testimony of Irvin G. Hamma.)

40 acres was \$108. He has received 90 cents a box for apples for his average. Cost of production averages 60 cents. He doesn't think the people of the District can pay more than \$8000 per year in taxes to the district.

HARRY B. NOBLE

was called as a witness for petitioner and testified: That he had resided in the District for 17 years and raises apples, walnuts, potatoes on his farm. The District land is rolling land, the soil is volcanic ash, which is porous and requires lots of water, and is unfertile. Originally it was covered with pine trees, oak and manzanita. Elevation is from 1500 to 2000 feet. He has had no profit on walnuts for the past 10 years. He doesn't think there is any land in the District owned by an ordinary average farmer that will earn sufficient to provide the family and pay state, county and irrigation taxes. He also thinks that \$8000 is the maximum amount that can be raised for irrigation district taxes per year.

Order No. 14 of the California Districts Securities Commission ultimately approving the composition plan of the District was received in evidence as a portion of Petitioner's Exhibit No. 8, a portion of which was read into the evidence as follows:

“(a) That the supply of water available is sufficient and the District has the right to so much water as may be needed under its existing plans.

(Testimony of Harry B. Noble.)

(b) That the soil of the District is fertile and susceptible of irrigation; that the District's irrigation system is feasible and operating successfully; that drainage has been provided for.

[82]

(c) That the reasonable value of the water, water right, canals, reservoirs, reservoir sites, irrigation works and other property owned by the District is estimated in excess of the sum of \$439,000; that the reasonable value of the lands included within the boundaries of said District is estimated in excess of \$430,000.

(d) That the \$252,500 par value of refunding bonds under consideration does not exceed 60% of the aggregate value of the water, water rights, canals, reservoirs, reservoir sites, irrigation works and other property owned by the District, and the reasonable value of the lands within the District.

(e) That the refunding bonds which are entitled to certification by the State Controller and which are available for the purposes specified in Section 9 of the California Districts Securities Commission Act are as follows:—

PETITIONER'S EXHIBIT 8

Petitioner's Exhibit 8 consisted first, of extracts from the official minute book of the board of directors of Paradise Irrigation District.

(Testimony of Harry B. Noble.)

Page 1 of the Exhibit set forth a resolution of the directors adopted June 30th, 1937, providing for the payment to the Reconstruction Finance Corporation of \$4,643.28 due as interest on July 1st, 1937.

Page 2 was a resolution of the board of directors adopted September 13th, 1937, reading in part as follows:

“Whereas: the budget adopted for the fiscal year 1937-38 requires for General Fund purposes \$23,631.44, and for Bond Service the sum of \$11,477.28, segregated into Bond Principal, \$2,110.53, and Bond Interest, \$9,366.75;

And whereas: it is reasonably anticipated that income from standby and toll water charges, land sales and other income will meet all General Fund requirements;

And whereas: The total assessed valuation of property within the Paradise Irrigation District subject to taxation for District purposes as assessed by the Assessor and equalized by the Board of Directors, sitting as a Board of Equalization for the year 1937-38, is the sum of \$360,071.55;

And whereas: it is reasonably anticipated that the sum of \$2,389.47, allocated to Bond Services purposes will be received from tax redemptions and land sales, leaving a balance of \$11,477.28 to be raised by taxation.

Now therefore be it resolved, that in order to

(Testimony of Harry B. Noble.)

raise said sum of \$11,477.28 for said purposes, an assessment be and hereby is levied upon all land within the boundaries of Paradise Irrigation District subject to an assessment for District purposes at the rate of 0.69%, payment of Bond Principal, and at the rate of 3.06% for payment of Bond interest, making a total levy of 3.75% upon the assessed valuation of land within the District, and the Secretary is hereby directed to compute and enter the same in the assessment book as provided by law;

And be it further resolved, that all money received from tax redemptions and applicable to Bond interest Fund, be and the same is ordered credited to the RFC Bond Reserve Fund."

The rest of the exhibit was a general statement or report, from the minutes, of the organization, development and condition of Paradise Irrigation District. This report was made [103] by Jerome D. Peters, attorney for the district, at the request and employment of the Board of Directors, and was dated June 20, 1938. Pages 13 to 38 of this exhibit contain the following:

The district made application to the R. F. C. for a loan and the latter authorized the loan in the sum of \$252,500, of which \$250,000 was for the purpose of purchasing the old bonds of the district at the rate of 52.521 cents per each dollar of principal amount.

(Testimony of Harry B. Noble.)

Certain owners of bonds of the district formed a bondholders protective committee, of which George Stephens was executive secretary. At the time H. S. Clewett was secretary of the district. Upon May 22nd, 1934, Emil Schram of the R. F. C. sent a form of letter to Mr. Clewett informing him that the loan had been authorized. The district then sent a letter to all bondholders urging them to deposit their bonds under the plan, and this letter also contained the following statement:

"Nearly all the interest falling due July 1st, 1932, has been paid by the District, AND IN ORDER THAT ALL HOLDERS OF BONDS MAY AS NEARLY AS POSSIBLE BE PLACED ON AN EQUAL FOOTING, the District will endeavor to arrange to meet the balance of the unpaid interest maturing on that date, but all unpaid interest coupons maturing subsequent to that date must be turned in with the bonds at the flat price."

On June 12, 1934, the district accepted the loan from the R. F. C., and thereafter the district secured the consent for its acceptance of the loan from the California Districts Securities Commission. On September 28, 1934, a special election was had in the district on the question of issuance of refunding bonds for the purpose of refinancing the indebtedness of the district.

Prior to the calling of the special election the bondholders committee had asked the district to

(Testimony of Harry B. Noble.)

pay the bondholders a "round sum of money against its expenses". Correspondence regarding this request was had between the R. F. C. and the district, the exhibit referring to this correspondence in part as follows: [104]

"In reply to Mr. Keenan, Mr. Clewett wrote upon August 20, 1934, acknowledging receipt of Mr. Keenan's letter of August 13, and stated that under "Resolution No. 1" of the Bondholders Committee, such Committee had agreed to accept for the coupons controlled by it payment in the sum of \$10.00 per coupon (each coupon being of the face value of \$30.00) for all coupons up to and including July 1934 maturity, which payment constituted interest at the rate of 2% per annum, and would be equivalent to interest at the rate of 4% per annum on the proposed new bond issue. The letter stated that no agreement for compensation to the Committee on account of its expenses or otherwise was made by the District, except to take up all coupons controlled by it up to and including July 1934 maturity at \$10.00 per coupon; that pursuant to such an agreement, the District had taken up all coupons presented of July 1933 maturity, and had allowed a proportion of those maturing January 1934, and that the agreement obligated the District to take up at \$10.00 each the remaining January and July 1934 coupons controlled by the Com-

(Testimony of Harry B. Noble.)

mittee. The letter further states that upon the loan being granted, the District entered into negotiations with the Committee concerning the District's obligations under the agreement and the matter of expenses of the Committee, as a result of which the Committee adopted a resolution dated June 8, 1934, a copy of which was attached to the letter, the effect of which was to adopt as a measure of the amount to be paid to the Committee the obligation of the District to take up at \$10.00 each all interest coupons controlled by the Committee up to and including the July 1934 maturity, and that no additional charge would be made against the District on account of Committee expenses.

Under date of September 5, 1934, Mr. Keenan replied to Mr. Clewett, acknowledging receipt of his letter, and of Resolution No. 6 of the Bondholders Committee, stating that the latter indicated that the District contemplated paying the Committee at the rate of \$10.00 for each 1934 coupon turned over by it to the District and that no deduction be made at the time of disbursement to cover 1934 coupons missing from bonds deposited through the Bondholders Committee. Mr. Keenan further added that if the Reconstruction Finance Corporation's interpretation of the proposed arrangement was correct, IT WOULD APPEAR THAT THE

(Testimony of Harry B. Noble.)

PLAN WOULD WORK TO THE ADVANTAGE OF BOND HOLDERS DEPOSITING THEIR SECURITIES THROUGH THE COMMITTEE AS AGAINST THE OTHER BOND HOLDERS. Mr. Keenan recalled that Section 9-C of the Resolution covering the loan made it mandatory for the applicant to submit for approval of the Corporation, a statement of the amounts to be paid depositaries, Committee Members, and others; and stated that no payment should be made to cover the expenses of the Committee until such expense had been approved by the Reconstruction Finance Corporation.

Again on September 10, 1934, Mr. Keenan wrote Mr. Clewett stating that the expenditures set forth in the District's budget for the year 1934-35 met with approval, with one exception, that is, the item "nonrecurring interest adjustment on the bond settlement," amounting to \$4,800. He further stated, "It would be advisable for you to defer further payments on account of 1934 coupons until such time as we have satisfactorily disposed of the questions raised in our letter of September 5th." [105]

By letter of September 17, 1934, Mr. Clewett replied to Mr. Keenan, stating, "... we do not intend to make any payment to the Bondholders Committee, either on their expenses or on such 1934 coupons, until the entire program has been approved by you."

(Testimony of Harry B. Noble.)

On October 11, 1934, Mr. Keenan again wrote Mr. Clewett stating that he understood from Mr. Clewett's letter of September 17 and previous correspondence, that the expenses incurred by the Bondholders Committee would be taken care of by the District through the purchase of 373 interest coupons which fell due in 1934, and stating that the Reconstruction Finance Corporation had no objection to the District buying in these coupons providing it was financially able to assume the additional obligation.

On October 24, 1934, Mr. Stephens, Executive Secretary of the Paradise Irrigation District Bondholders Protective Committee, wrote Mr. Clewett that the bond holders were not going to permit their bonds to go until the payment (the \$10.00 per coupon) was made. A copy of this letter is hereto attached and made a part hereof and is marked Exhibit "A".

Upon October 24, 1934, Mr. Keenan wrote Mr. Clewett asking him to explain as to the source of the funds necessary to meet this interest payment, and directed his attention to Paragraphs 4 and 9 (c) of the Reconstruction Finance Corporation resolution granting the loan.

On October 25, 1934, Mr. Clewett replied to Mr. Stephens' letter of October 24, and warned him of the possible dire consequences of making

(Testimony of Harry B. Noble.)

the payment in question to the Bondholders Protective Committee, without the approval of the Reconstruction Finance Corporation. A copy of this letter is hereby attached, is made a part hereof, and is marked Exhibit "B".

Upon October 26, 1934, Mr. Stephens of the Committee, wrote Mr. Clewett, giving him a list of 373 bond holders' coupons in the hands of the Committee. It is well to note that of these 373 bond holders, but 323 finally came in under the composition entered into with the bond holders; the remaining 50 coupons were what are known as the Mason, etc. coupons, which will be mentioned later.

Upon October 29, 1934, Mr. Clewett wrote the Committee that he noted in the list of coupons listed as being in the hands of the Committee, there were 48 coupons from what are known as the Mason, etc. bonds, and that the bonds to which these coupons were attached had not been deposited under the terms of the settlement agreement, and suggesting that such coupons be eliminated from the settlement and be not paid for at the rate of \$10.00 per coupon; in reply thereto on October 30, Mr. Stephens of the Committee wrote Mr. Clewett that he did not think it wise to hold out on these Mason bonds, and stated that the District would have enough trouble with Mason before it was through and that he (Mason) would be

(Testimony of Harry B. Noble.)

only too happy to find an instance of INEQUALITY upon which to hand his further activities. It is to be noted that Secretary [106] Clewett's letter to Stephens mentions only 48 Mason coupons, whereas the previous letter of Stephens to Clewett mentions 50 Mason coupons.

At this point, reference is made to a letter from the Secretary to Mr. Frank J. Keenan, Financial Adviser, Reconstruction Finance Corporation, dated October 31, 1934.

Upon November 3, 1934, the Secretary wrote the Bondholders Committee that the District intended reporting to the Reconstruction Finance Corporation, and eliminating the coupons of all non-depositing bond holders (Mason et al bonds) and upon November 6, 1934, Mr. Stephens of the Committee wrote the Secretary, stating it would be unfair to report the matter as suggested, and stating that in fairness, Mason should be paid for his coupons as other members of the Bondholders Committee.

Upon November 6, 1934, Mr. Stephens of the Committee wrote Mr. J. E. Alley, superintendent of the District, in respect to this matter.

Upon November 9, 1934, Mr. Keenan of the Reconstruction Finance Corporation wrote the Secretary of the District, and together with other things, stated that it might be advisable for the District to take up the entire lot of 373 coupons at the rate of \$10.00 each, but he was

(Testimony of Harry B. Noble.)

solicitous over the means of the District making payment and stated that such payment would amount to \$3,730, and the District would have \$5,050 additional to raise to pay the interest on the new bonds from July 1, 1934 to date of disbursement, and that the District only had \$2,486 on hand to meet these payments. Mr. Keenan stated he had noted the Secretary's statement that there was \$10,250 of the construction fund derived from the proceeds from the sale of bonds issued in 1919 for construction purposes, and that the District might borrow from this sum to meet and pay the balance of the above mentioned indebtedness. Mr. Keenan expressed some doubt as to the legality of such procedure, but suggested the District should obtain advice from its counsel as to its legality.

Upon December 3, 1934, Mr. Keenan of the Reconstruction Finance Corporation wrote the Secretary that it would be satisfactory to the Reconstruction Finance Corporation to have the District either borrow money from the construction fund or have the money transferred from said fund, as heretofore suggested, for the purposes mentioned, and suggested the District proceed in such matter as counsel and the directors of the District deemed advisable.

Under date of December 17, 1934, the Reconstruction Finance Corporation, through H. A.

(Testimony of Harry B. Noble.)

Mulligan, as Treasurer, sent to the Federal Reserve Bank of San Francisco instructions in reference to the loan in question, and among the instructions contained in such letter was the following:

"DEDUCTIONS SHALL ALSO BE MADE for the full amount of the coupons falling due July 1, 1934, or subsequently thereto, WHICH DO NOT ACCOMPANY the bonds even though it appears that said coupons have been presented for payment and paid by the [107] District. Accordingly, you are instructed to make a deduction for the face amount of the coupons detached from the bonds as set forth in Exhibit 'A', where it appears that the first unpaid coupon is the one falling due January 1, 1935."

The face value of each of the coupons referred to in the foregoing instructions was the sum of \$30.00.

Upon December 21, 1934, Mr. Stephens of the Bondholders Committee, wrote the Secretary that he had ordered the coupons held by him (373) shipped to the District in care of the Bank of America, Chico, to be delivered when the sum of \$3,730 was paid to the Bank for the Bondholders Committee. Mr. Stephens further states that if there is any further delay in consummation of the Government matter, that it would do no harm to have the coupons

(Testimony of Harry B. Noble.)

lying in Chico, AS OF COURSE THEY SHOULD BE SEPARATED AND ATTACHED TO THE RESPECTIVE BONDS PRIOR TO DELIVERY, AND THIS WILL BE SOME LITTLE TASK. In reply thereto, the District Secretary wrote Mr. Stephens on December 24, "We have instructed the Bank of America to re-attach the July 1, 1934 coupons PURCHASED FROM YOU to their respective bonds, IT BEING OF COURSE, UNDERSTOOD THAT IF FOR ANY REASON THE FEDERAL RESERVE BANK SHOULD FAIL TO COMPLETE THE PURCHASE OF SAID BONDS, THE SAID JULY 1, 1934 COUPONS ARE TO BE CONSIDERED AS PAID AND SURRENDERED BY YOU TO US FOR CANCELLATION WITHOUT FURTHER CONSIDERATION."

Upon December 24, 1934, the Secretary wrote the Bank of America, Chico, delivering a check of the District of the same date to the Bank, in the sum of \$3,730, in payment of 373 matured interest coupons (\$15.00 coupons being counted as one-half coupon) of the district of January 1 and July 1, 1934 maturity. The Secretary further instructed the Bank: "YOU ARE INSTRUCTED TO DELIVER TO US FOR CANCELLATION SAID COUPONS OF JANUARY 1, 1934 MATURITY, AND

(Testimony of Harry B. Noble.)

RE-ATTACH TO THEIR RESPECTIVE BONDS SAID COUPONS OF JULY 1, 1934 MATURITY." The foregoing instructions were carried out by the depositary, the Bank of America, Chico Branch.

* * * * *

The only record upon the minutes of the Board of Directors of the transaction in question is in the minutes of the meeting of June 12, 1934, and **CONSISTS OF A RECITATION OF** a resolution of the Bondholders Protective Committee, and is as follows:

"The District will pay, **THROUGH FUNDS OBTAINED** from the R. F. C., the sum of \$525.21 per \$1000 bond (\$262.60 per \$500.00 bond) delivered to the depositary, accompanied by January 1934 and all subsequent coupons, **PLUS INTEREST AT 4% ON THE PURCHASE PRICE FROM JULY 1, 1934, UNTIL THE MONEY IS PAID.** Coupons that have been turned in to the District will apply.

"The District will, in accordance with the arrangement heretofore made with the Committee, pay the Committee \$10.00 per coupon for coupons of January and July 1934 maturity held by it. [108]

"Resolved that this Committee, as individuals, accepts settlement on the terms as outlined above, and that it will promptly

(Testimony of Harry B. Noble.)

upon receipt of advices that the depositary has been selected, urge all bondholders to do likewise, and will make every effort to induce deposit of bonds.

"Dated this 8th day of June, 1934.

"(signed) GEORGE STEPHENS

Secretary

"(signed) WICKHAM QUINAN

"(signed) FRANK P. DOYLE

Members of Committee."

Following the recitation of the foregoing resolution in such minutes, the following appears therein, as follows, to wit:

"After discussion of the matter it was moved by Wegner, seconded by Conrow and carried, that the proposal of the Paradise Irrigation District Bondholders' Protective Committee, relative to acceptance of settlement of the bonded indebtedness of this district FROM PROCEEDS OF LOAN FROM RECONSTRUCTION FINANCE CORPORATION as set out in Resolution of said Committee, dated June 8th, 1934, be accepted, with the proviso that interest at four per cent on the settlement price from July 1st, 1934 be paid, either until the money is disbursed to the bondholders or until interest to the Reconstruction Finance Corporation commences, whichever may first occur."

(Testimony of Harry B. Noble.)

The final result was that the district paid \$33,370 for 373 interest coupons maturing July 1, 1934. This amount included 50 interest coupons owned by J. R. Mason, whose bonds pertaining to said coupons were not deposited. When the bonds of the bondholders committee were taken up with moneys loaned by the R. F. C. at the rate of 52.521 cents on the dollar, no deduction was made for the moneys which had been paid upon the interest coupons of July 1, 1934.

"Subsequently, the bonds deposited by the Bondholders Committee were taken up with monies loaned by the Reconstruction Finance Corporation at the rate of 52.521 cents on the dollar; although the Bondholders Committee had been paid \$10.00 for each interest coupon in its hands due July 1, 1934, yet, nevertheless, no deduction was made in any sum at the time of settlement therefor, whereas, if the coupons had been detached and marked paid, the sum of \$30.00 (the face value) would have been deducted.

The so-called Mason bonds did not participate in the composition and were and still are "non-accepting" bonds. The July 1, 1934 interest coupons on the Mason Bonds were in the hands of the Bondholders Committee and the Mason [109] interests received \$10.00 for each of such coupons, the same as others who had deposited with the Committee. However, the Mason coupons were marked paid and surren-

(Testimony of Harry B. Noble.)

dered and cancelled and he will obtain no further sum on such coupons, whereas, the remaining members of the Bondholders Committee not only received \$10.00 for each of such coupons, but in addition received in effect \$30.00 additional (if they had been marked paid and were detached the sum of \$30.00 each would have been deducted from the settlement figure on each bond).

The apparent effect of the foregoing transaction was:

1. That the District paid to the members of the Bondholders Committee that deposited their bonds for composition, the sum of \$40.00 for each interest coupon due July 1, 1934, the face value of which was the sum of \$30.00.

2. That there was a discrimination shown in respect to the bondholders in that the depositing bondholders received, in effect, the sum of \$40.00 for each of the interest coupons due July 1, 1934, whereas the Mason non-depositing bondholders received but the sum of \$10.00.

3. That there was a loss to the District in the transaction, either in the sum of \$10.00, the excess payment made on the July 1, 1934, interest coupons to the depositing bondholders, or, in the event the payment of \$10.00 therefor paid and cancelled such coupons, then in the sum of \$30.00 for each of such

(Testimony of Harry B. Noble.)

coupons, the effect being in the latter case, to increase the bonded indebtedness of the District; there were 323 of such coupons."

The bondholders who did not deposit their bonds were J. R. Mason and the James H. Jordan Co., owning bonds in the face amount of \$29,000.

The report went on to recite the difficulties the district has had with its water distribution system.

Pages 44 through 53 were exhibits attached to the report, being certain letters as follows:

The first was a letter from George Stephens of the Bondholders Protective Committee to H. S. Clewett, Secretary of the district, dated October 24, 1934, referring to the question of the payment of \$10.00 on July 1, 1934, and stating:

"It is my firm belief that the best thing for you to do now is to have these coupons shipped up there, make payment in accordance with arrangement, your ground [110] being if the question is ever raised, that having no response to your letter written away back on September 17, you had naturally assumed that your explanation was satisfactory. This will make it very much easier for the R. F. C. officials. I don't think you should under any circumstances again raise the point in Washington or ask for a further reply. And I think the sooner it is done the sooner you will be on your way toward final and early consummation. Bondholders are not going to permit their bonds to go out until"

(Testimony of Harry B. Noble.)

the payment is made. I think the R. F. C. is going to be ready to make disbursement pretty soon. Bondholders are asking in some districts that the equivalent of 4% on the new loan be paid to the old bondholders in instances where no interest has been being paid since default, and Washington is naturally shying at this. Your 4% is nothing more nor less than a continuation of your theretofore paid 2% on the original indebtedness and as such is logical and proper. But, again, if Washington had to give a decision, the item being set at 4% will make many explanations to other applicants necessary and be embarrassing to the officials.

Please let me know your views promptly."

Pages 47 and 48 were a letter from H. S. Clewett to the Bondholders' Committee, dated October 25, 1934, reading in part:

"My last letter from Mr. Keenan under date of October 11th reads as follows:

"I understand from your letter of September 17th and previous correspondence that the expenses incurred by the Bondholders' Committee will be taken care of by the District through the purchase of interest coupons which fell due in 1934. If this is correct, we have no objection to the District buying in these coupons provided it is financially able to assume this additional obligation. You are therefore asked to submit a statement of the District's financial operations for the period from January 1st, 1934 to date.

(Testimony of Harry B. Noble.)

"Upon receipt of this statement we will consider the matter of the payment by the District to all depositing bondholders of interest from July 1st, 1934 at the rate of 4% based on the purchase price set forth in our Resolution."

Page 49 was another letter from George Stephens to Mr. Clewett dated October 30, 1934, reading in part as follows:

"Yours 29th. I don't think it is safe to hold out on the Mason-Masten bonds. You will have enough trouble with Mason before you get through, and he would be only too happy to find an instance of inequality upon which to hang his further activities. By all means let us make him a party to our transaction by disbursing to him just the same as to all other depositors. As a matter of fact he is a coupon depositor with this Committee, and there is no connection between his agreement to the interest adjustment [111] and his non-agreement to the principal adjustment. I don't care what happens to MacDonald, but I have an idea he must be taking his advice from Mason, otherwise he wouldn't have the courage to hold out with two bonds, and I think this small instance might be just as useful to Mason as his own. If Mason is going to be outside of our camp he can stir up all sorts of things with Plotts if he were aggravated to that point. Regardless

(Testimony of Harry B. Noble.)

of the fact that he may not presently come in I do not believe that he will go out openly and fight me unless of course I should do something he considers unfair to him."

Page 50 was another letter from George Stephens to Mr. Clewett dated October 30, 1934, reading in part as follows:

You are doing very wrong if you report to Washington any other status of coupons in hands of Bondholders Committee than that in accordance with the data given you. This office has no interest in Mr. Mason, but it has a deep interest, as it ever had had, in fulfilling its obligations, either written or oral, to the letter thereof. Mr. Mason joined with the others in an interest adjustment with the District. To this extent he is no different than any other bondholder who joined with this Committee, and he received the same reports as to adjustments and settlements as issued to all other bondholders, and of course he is entitled to receive the same treatment as they. The fact that, while agreeing with the interest adjustment, he later did not agree with the plan of principal adjustment, is an entirely separate and distinct matter, having no bearing whatever upon the earlier transaction.

So much for the fairness and justice of the matter, which will govern us under any circumstances. Now as to the practicalities.

(Testimony of Harry B. Noble.)

You underestimate what Mason is doing in California, and what he can do in your case. There is no need for me to go into these details. You must credit this office with being in position to know pretty much what is going on in Government refinancing activities. Many transactions are not going through that *could* go through. After Mason came in on the interest adjustment, which is one of the very few instances where he has ever gone so far, any attempt to accord him different treatment than the others who joined in the same adjustment will put tools in his hands that I am afraid you would find very costly. Your expressed thought that the small amount of money might be useful to Mr. Mason is not in point. Mr. Mason has all the money he needs to carry on his activities. The place to hold Mason is as a party to your transaction. In the end he is very likely to go the whole way."

Page 52 was a letter from George Stephens to J. E. Alley, a member of the Board of Directors of the District, dated November 6, 1934 and reading in part as follows: [112]

"What's got into Clewett? For the past month or two he has been picking at little things and writing long letters of thinly veiled criticism of me and this office. He has some idea that the 1933 interest payment has to be

(Testimony of Harry B. Noble.)

adjusted. A simple reading of the resolution sets up the transaction clearly. Because we later set aside a reserve against non-depositors at the ratio that all outstanding bonds bore to the round sum remaining in Bond Fund which was accepted in settlement, \$4189.33, which figures \$8.80 per bond, he now claims there was "over payment". The fact that this settlement as recited in resolution, was since accounted and reported to all bondholders seems to make no difference.

Now he has jumped to the idea that Mason, who joined in the interest adjustment, but who later did not concur in the principal adjustment, should not receive the final disbursement on interest adjustment. I hold no brief for Mason, as you well know, but this isn't a matter of personalities. Mason is *entitled* to the interest disbursement. That's all there is to it.

Both these items obviously base on an endeavor to save his District some money and as such may be praiseworthy, but both entail abrogation of agreements—agreements accounted, audited and reported to bondholders. And the sum of money involved might be said to be almost negligible.

In the Mason instance, entirely aside from the matter of justice, is the matter of what Mason could, and I am very sure would, do if anyone attempted to accord him different treat-

(Testimony of Harry B. Noble.)

ments than the others. I KNOW what he can do, and I don't relish it, and your district would relish it less. And it is smart to have him a party to our transaction, if only the first part of it. He won't then be likely to obstruct us, but more likely to eventually come along with his bonds."

Page 54 was an exhibit attached to the report showing the number of repairs to the district's pipeline from 1928 to 1938, a copy of which is set forth on page 18a.

Page 55 was a resume of the annual reports of the district, a copy of which is set forth on page 18b.

Page 56 read:

"EXHIBIT "I"

Present Financial Condition:

Bond Interest Fund:

Balance February 29, 1932	\$ 171.11
Outstanding coupons	2,745.00

Bond Principal Fund:

Balance February 29, 1932	640.23
Unpaid Principal	0.00
Bonds maturing July 1, 1932	2,000.00

Construction Fund:

Balance February 29, 1932	15,000.00
(not transferable)	

General Fund:

Balance February 29, 1932	4,763.95
Outstanding warrants	0.00

[113]

EXHIBIT "F"

MONTHLY PIPELINE REPAIRS

	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938
	B C	B C	B C	B C	B C	B C	B C	B C	B C	B C	B C
January	19 nr+	36 nr+	19 nr+	30 nr+	30 nr+	23 17	25 66	26 71	27 9	46 29	68 35
February	28 "	31 "	31 "	31 "	47 "	48 115	39 47	23 50	6 13	57 32	30 16
March	16 "	35 23	66 "	92 "	36 "	52 26	66 121	33 93	47 38	91 83	76 61
April	31 "	29 nr+	72 "	71 "	70 "	112 39	86 62	45 97	35 50	69 47	106 88
May	78 "	52 "	56 "	54 "	85 "	53 64	122 173	51 81	62 61	130 53	148 59
June	52 "	82 "	61 "	104 "	88 "	108 55	98 69	65 122	50 32	75 40	
July	32 "	43 "	67 "	59 "	96 "	80 15	71 42	72 77	27 110	78 53	
August	18 "	92 "	45 "	70 128	46 "	78 85	78 51	50 55	84 91	73 53	
September	53 "	109 "	63 "	77 nr+	58 "	70 70	75 110	82 59	81 80	72 58	
October	27 "	48 "	41 "	106 "	66 "	74 101	85 77	46 48	69 80	87 50	
November	26 "	86 "	36 "	72 "	67 "	73 60	26 50	38 20	67 100	90 40	
December	19 "	46 "	41 "	41 "	48 "	57 124	29 9	23 7	80 189	50 37	

B—"Breaks"—repaired—see Schedule "G".

C—Collars—i. e. jointure of pipe lengths—see "G" 3.

+No record.

EXHIBIT "H"
RESUME OF ANNUAL REPORTS OF THE DISTRICT

Annual Reports Dated	Outstanding	BONDS Cancelled	(for taxes) Valuation	Annual Levy	ASSESSMENTS Bond & Int. Income	Bond and Int. Expenditure	GENERAL FUND Income	Disburse- ments	CONSTRUCTION FUND Balances	Expenditures	ALL FUNDS (except RFC reserve) Total Income
1926 Dec. 31st	487				12,311.88		2,932.69		35,509.37		
1927	487,000	1,000	613,000	46,390.17	31,608.72	29,920	12,506.64	12,896.76	(Int.) 1,283.72		
1928	486,000	2,000	618,525	46,516.16	30,225.27	30,475	13,849.44	13,105.86	36,793.59	2,038.65	44,115.36
Fund Trans- fers, '29							(Fr. Const. Fund 3,000)		34,754.94	4,939.16	44,074.71
1929	484,000	2,000	620,203	46,600.20	27,701.50	31,325	12,729.66	15,805.36		(To Gen. Fund) 3,000	
Fund Trans- fers, '30							(Fr. Const. Fund 2,000)		26,815.78		40,431.16
1930	482,000	2,000	621,332	46,072	25,606.21	31,100	11,701.36	14,795.50		(To Gen. Fund) 2,000	
Fund Trans- fers, '31					(From Gen. Fund.) 5,000		(Fr. Const Fund to Bond Fund) 6,742.24	5,000	22,926.16	1,889.62	37,307.57
1931	480,000	2,000	615,439	44,980	24,515.60	30,770	13,800.11	14,190.73		(To Gen. Fund) 6,742.24	
Fund Trans- fers, '32							(Fr. Const. Fund 2,000.00)		15,000	1,183.92	38,376.71
1932	478,000	1,000	563,997	42,185	19,856.38	19,658.48	10,865.86	15,002.50		(To Gen. Fund) 2,000	
Fund Trans- fers, '33							(Fr. Const. Fund) 3,000		13,000		30,722.24
1933	477,000	560	536,012	34,170	17,765.55	17,895.14	10,614.59	12,720.60		(To Gen. Fund) 3,000	
Fund Trans- fers, '34					(From Gen. Fund) 10,301.52	1,686.52	(Fr. bond & int.) 1,686.52	(To Const. Fund) 2,500	10,000		28,380.14
1934	476,000		363,277	13,622	12,751.83	22,405.84	(Fr. Const fund) 6,000.00	(To bond int. fund) 10,301.52		(To Gen. Fund) 6,000	
Fund Trans- fers, '35						(To Gen. Fund) 2,500	20,214.54	16,558.15	4,250		32,966.37
					23,053.35		(Fr. const. fund) 3,750	(To const. fund) 2,500	(Fr. Gen. Fund) 2,500	(To Gen. Fund) 3,750	
Fiscal year 1935, Bond Interest requirements reducing by Refinancing.											
					\$30,000 and Refinancing = \$233,643.66 at 4%						
1935	263,643.66		387,611	12,728.83	12,872.78	9,707.94	(Fr. bond & int.) 2,500				
1936	263,168.87		357,215	10,514	9,581.02	5,734.45	Original Bond issues at 6% interest.				
Fund Trans- fers, '37							13,814.82	18,005.71	3,000		27,606.30
1937	263,168.87		360,071	11,477	10,685.06	11,312.85	16,859.32	16,671.04	3,000		26,390.34
1938			359,608	11,462.51	10,561.06	None.	(Fr. Const. Fund) 3,000			(To Gen. Fund) 3,000	(3,000.00)
							27,184.49	25,915.99	0,000		(37,819.55)
							30,184.49	(To RFC Reserve) 1,958.29			40,819.55
							31,425.61	30,600.42	0,000		41,986.67

EXHIBIT "H"

RESUME OF ANNUAL REPORTS OF THE DISTRICT

(210)

RESUME OF ANNUAL REPORTS OF THE DISTRICT														(21)
GENERAL FUND		CONSTRUCTION FUND		ALL FUNDS	RFC RESERVE FUND		REHABILITATION WOOD-STAVE PIPE			DISTRICT LANDS				
Income	Disbursements	Balances	Expenditures	(except RFC reserve) Total Income	Total Disbursements	Balances	Expenditures	Half repair crew chgd up to date watermaster began water distribution	SERA-WPA	CAPITAL IMPVTS	Acreage on Assessment Roll	Acreage Tax Deeded to District	Land Sales (shown in Gen. Fund)	
2,932.69		35,509.37												
12,506.64	12,896.76	(Int.) 1,283.72												
13,849.44	13,105.86	36,793.59	2,038.65	44,115.36	44,855.41					(pipe)	10,908			
(Fr. Const. Fund 3,000.		34,754.94	4,939.16	44,074.71	48,520.02			1,904.96		4,939.16	10,880			
12,729.66	15,805.36	26,815.78	3,000.					2,304.85						
(Fr. Const. Fund 2,000			(To Gen. Fund)	40,431.16	47,130.36									
11,701.36	14,795.50		2,000					4,173.09			10,901			
(Fr. Const Fund to Bond Fund)		22,926.16	1,889.62	37,307.57	47,785.12									
6,742.24	5,000		(To Gen. Fund)					3,059.74		1,889.62	10,890	381	324.75	
13,800.11	14,190.73	15,000	6,742.24											
(Fr. Const. Fund 2,000.00			1,183.92	38,376.71	46,144.65			2,275.39		1,183.02	9,019	2,231	1,922.80	
10,865.86	15,002.50	13,000	(To Gen. Fund)											
Fr. Const. Fund) 3,000			2,000.	30,722.24	34,660.98			4,476.88			8,440	2,810	1,886.35	
10,614.59	12,720.60	10,000	(To Gen. Fund)											
(Fr. bond & int.) (To Const. Fund)			3,000	28,380.14	30,615.74			2,485.96			8,583	2,667	1,633.23	
1,686.52	2,500													
(Fr. Const fund) (To bond int. fund)			(To Gen. Fund)											
6,000.00	10,301.52		6,000											
20,214.54	16,558.15	4,250		32,966.37	39,963.99			4,003.42			8,593.59	2,656.41	1,344.47	
(Fr. const. fund) (To const. fund)		(Fr. Gen. Fund)	(To Gen. Fund)											
3,750	2,500	2,500	3,750											
(Fr. bond & int.) 2,500														
Original Bond issues at 6% interest.														
13,814.82	18,005.71	3,000		27,713.65	27,713.65	918.70		2,453.21	9,415		7,670	3,580	2,851.58	
16,859.32	16,671.04	3,000		22,405.49	22,405.49	2,895.32		2,143.45	10,174		7,100.56	4,149.44	5,764.73	
(Fr. Const. Fund) 3,000			(To Gen. Fund)	27,606.30										
27,184.49	25,915.99	0,000	3,000.	26,390.34										
30,184.49	(To RFC Reserve)		(3,000.00)	37,228.84	37,228.84	2,391.90		2,327.25	28,708.63	1,768.72	7,010	4,240	8,752.25	
31,425.61	1,958.29		(37,819.55)	30,600.42	30,600.42	5,185.95		3,946.24	(To complete)	7,508	6,931	4,319	6,645.58	
	30,600.42	0,000		40,819.55				35,554.44	48,297.63					
				41,986.67										

[114A]

(Testimony of Harry B. Noble.)

Reasons for Default: (Tax delinquencies)

This is to some extent a matter of opinion and in this light the following are listed:

Inclusion of too much untillable land within the District.

Timber and brush on land requiring expensive clearing.

Too many large acreages.

Tax rate too low.

No allowance for anticipated delinquency.

Dry year and poor markets.

A combination of low priced land and low water rate that has attracted many people of insufficient means to carry on.

Delinquencies, etc.

Year	Valuation	Levy	To Feb. 29, '32 including penalties	Delinquent	
1921	610,000	36,583	36,954		
1922	614,748	36,884	36,124	\$ 760	2%
1923	613,893	36,829	35,903	926	2.5%
1924	613,784	46,026	44,329	1,687	3.7%
1925	612,802	45,959	43,699	2,260	4.9%
1926	613,010	45,978	42,230	3,748	8.1%
1927	618,525	46,381	38,421	7,960	17.0%
1928	620,270	46,516	38,644	7,872	16.9%
1929	620,644	46,600	36,440	10,160	21.8%
1930	615,439	46,072	32,542	13,530	28.0%

EXHIBIT "J"

Total Bond Debt and Book Value of Irrigation Works:

1. First Issue	\$350,000.00
Second Issue	140,000.00
Total Bond Indebtedness	\$490,000.00
Bond Sale Commissions	11,676.00
Net Funds to District	\$478,324.00

(Testimony of Harry B. Noble.)

2. Book Value of System:

Reservoir and Appurtenances \$178,354.62

Distribution System 270,153.60

\$448,508.22

Balance in Construction Fund January 1,

1929

\$ 29,815.78

3. Distribution system is 60.23% of total cost of irrigation works."

Page 57 was a resolution of the Board of Directors of the District approving and adopting the report which made up the major part of Exhibit 8.

NEWCOMB C. McCARTHY

was called as a witness for petitioner and testified: That he lived in the District for 22 years. An acre foot and a half of water is needed for the proper irrigation of apples. Such amount, the growers do not get. Almonds require between an acre foot and an acre foot and a half. Berries require an acre foot. Potatoes require at least two acre feet. Walnuts require at least three acre feet to produce a crop that will pay. Truck gardens require at least two acre feet of water. The average requirement for production of crops in the District is two acre feet in order to raise a profitable crop.

The District has available about 3600 acre feet of water. About 2500 acres are irrigated in the District. In his opinion, The District cannot meet 6% interest upon \$476,000 of bonded indebtedness.

LEVI P. FISHER

was called as a witness for petitioner and testified: That he lives in the District and has owned property therein 13 years. He raises, principally, apples, and the average price received has been 60 to 65 cents. Cost of production is 46 to 47½ cents, exclusive of his labor. In 1937 he had 2300 packed boxes of apples. The price returned to him above the packing house costs was \$778. The cost of production of the crop was \$487, exclusive of his own labor. In 1938 the crop was 750 boxes sold at the ranch for an average of 75 cents [83] per box. Cost of production was between 38 and 40 cents per box.

The hearing was then adjourned until March 20, 1939, at which time the petitioner offered further evidence as follows:

Letter, dated March 16, 1937 from the R. F. C. to H. S. Clewett, was received in evidence as Petitioner's Exhibit 9.

It was stipulated that the District requested that the bonds held by the R. F. C. be registered under the Statute of 1913, (ch. 23), and they were registered in the name of the R. F. C. on July 1, 1936, at the suggestion of the attorney for the District. From the time the loan was disbursed until July 1, 1936, none of the bonds had ever been registered through or by the R. F. C. prior to the time this suggestion was made.

HOWARD S. CLEWETT

was then recalled as a witness and testified that he was secretary of the District from 1933 to March, 1935, and was attorney for the District up to 1936. A letter dated June 5, 1936, from H. S. Clewett to the R. F. C. was received in evidence as Petitioner's Exhibit 10 relative to the purchase of bonds by the R. F. C., subject to respondent's objection that it contained a conclusion of the writer.

PETITIONER'S EXHIBIT 10:

Petitioner's Exhibit 10 was a letter dated June 5, 1936, written by H. W. Clewett to Emil Schram of the R. F. C. Washington, D. C., reading in part as follows: [115]

"All except \$30,000.00 par value of bonds of this district were sold to and are now held by your corporation under the readjustment plan, and twenty-nine of the thirty dissenting bonds are controlled by J. Rupert Mason who will avail himself of every possible legal leverage to force payment in full of both principal and interest.

None of his bonds have as yet matured although three of them will mature July 1, 1937. There are, however, outstanding unpaid matured interest coupons commencing with January 1, 1935, on all except three bonds and commencing with July 1, 1934, on those three making a total of 119 outstanding matured interest coupons including the July 1, 1936 maturity of

(Testimony of Howard S. Clewett.)

\$30.00 face value each, of a total of \$3570.00.

Mr. Mason has consistently followed the practice of registering these coupons as they fall due although he knew they would not be paid and they are now all registered with the exception of the July 1, 1936 maturity and with the possible exception of the January 1, 1936 maturity, so that he holds either \$1830.00 or \$2700.00 of registered matured interest coupons and upon registering the July 1st maturity will hold \$3570.00 thereof.

When the bonds purchased by your corporation were delivered to the Federal Reserve Bank, a considerable part of the then matured interest coupons had been registered and were entitled to priority in payment over the subsequent registered coupons of Mr. Mason but as the Federal Reserve Bank has been surrendering these coupons in an amount equal in face value to the interest payments made by the District on the advances made by you in purchase thereof, probably the greater part of the registered coupons entitled to priority of payment have been surrendered and if not, soon will be and the District will be in a position of having no valid legal defense to interpose if Mr. Mason commences a suit against the Treasurer to compel payment of his interest coupons.

In my opinion, it is therefore extremely important that you instruct the Federal Reserve

(Testimony of Howard S. Clewett.)

Bank to immediately detach from the bonds which it holds and send to the District for registration all matured interest coupons which it holds so that they can be registered ahead of the July 1, 1936 maturity of Mr. Mason, and at the same time, I think they should send in the July 1, 1936 maturity on your bonds and we will register them first on July 1st which will place them ahead of any subsequent registrations."

Over objection of respondent that it was a conclusion of the witness, he further testified that he knew the bonds were purchased by the R. F. C. because he arranged the transaction. The bonds were deposited in escrow with the Bank of America and the bank sent them by registered mail to the Federal Reserve Bank in San Francisco. As secretary he had to go to San Francisco, and in the vault of the bank examined each individual bond and signed a certificate that it was a valid, outstanding obligation of the District. After that the Federal Reserve Bank issued to the Bank of America at Chico its draft covering the bonds which he had so certified.

The contracts authorized by a resolution of the Board of Directors of the District, a copy of which contracts appears in Petitioner's Exhibit 3, were signed by the president and [84] secretary and by the officers of the R. F. C.

(Testimony of Howard S. Clewett.)

PETITIONER'S EXHIBIT 11:

Petitioner's Exhibit 11 was a letter dated March 13, 1935, from H. A. Mulligan, Treasurer of the R. F. C., to the Federal Reserve Bank of San Francisco, giving instructions as to payment for two bonds and reading in part: [116]

"A certificate will be presented to you by the Treasurer of Paradise Irrigation District, setting forth which coupons have been paid on the above-mentioned two bonds. In the event any interest coupons are missing which do not appear from the certificate just mentioned as having been paid, deductions shall be made on account of each such missing coupon at the rate provided in our letter of December 17, 1934."

The letter also contained instructions as to payment of interest to the R. F. C., as follows:

"Therefore, hereafter, on July 1, and January 1, of each year you should present for payment in accordance with their terms, matured interest coupons of the earliest maturity dates, in face amount as nearly as possible equal to, but in no event less than interest at 4% per annum accrued and unpaid upon the aggregate amount disbursed pursuant to this letter and the letter of December 17, 1934. The amount collected on account of such coupons should exactly equal the amount of such interest. If

(Testimony of Howard S. Clewett.)

partial payment upon one of such coupons is necessitated, a credit in the amount of such payment should be endorsed on such coupon and it should be retained by you until fully paid."

A letter dated March 13, 1935 from the R. F. C. to the Federal Reserve Bank was received in evidence as Petitioner's Exhibit 12.

Upon

Cross Examination,

the witness testified that after the R. F. C. disbursed the money before July 1936, it presented coupons for payment but not bonds, to the best of the knowledge of the witness. He ceased to be secretary in March 1934. It presented enough coupons when they collected the semi-annual interest to approximately equal that amount of interest. Other than that, they did not present any coupons or bonds until July 1, 1936, when they were all presented for registration.

The resolution of the R. F. C., adopted April 6, 1938, was received in evidence as Petitioner's Exhibit 13.

JAMES B. THOMPSON

was recalled as a witness for petitioner and testified that, during his term as secretary and superintendent of the district, the old bonds of the District were kept in the Federal Reserve Bank in San Francisco, and so far as the witness knew the District did not have access to them nor were they in his custody or care nor in the care of any officer of the District, to his knowledge.

Petitioner rested.

It was also stipulated that there is pending in the Superior Court of Stanislaus County certain proceedings for writ of mandate brought by J. R. Mason and E. Masten against the District and some of its officers. That the District and its officers made an appearance in that case and an injunction staying proceedings was issued by this Court, and the matter remained in that position.

The alternative writ of mandamus and petition and points and authorities were received in evidence as Respondent's Exhibit 5. [85]

RESPONDENT'S EXHIBIT No. 5:

Respondent's Exhibit 5 was a copy of petition for writ of mandamus, points and authorities and alternative writ of mandamus in the case of J. R. Mason and E. Masten, Petitioners, v. Paradise Irrigation District, the Board of Directors of Paradise

(Testimony of James B. Thompson.)

Irrigation District, W. S. Clark as Treasurer of Paradise Irrigation District, and J. B. Thompson as Secretary of Paradise [120] Irrigation District, Respondents, in the Superior Court of the State of California, in and for the County of Stanislaus. The Alternative Writ of Mandamus reads in part as follows:

“Whereas, it appears by the verified petition of J. R. Mason and E. Masten, verified by J. R. Mason, the persons beneficially interested therein, that you, Paradise Irrigation District, the Board of Directors of Paradise Irrigation District, W. S. Clark as Treasurer of Paradise Irrigation District, and J. B. Thompson as Secretary of Paradise Irrigation District, refuse to pay bonds and interest coupons in the sum of \$5610.00, with interest at 7% per annum from the time of presentation thereof, due and held by said petitioners, and it appears from said petition that the petitioners therein are entitled to payment out of the bond fund and bond interest fund of said district, or if funds belonging thereto are not in said fund, then to have such funds transferred to the bond fund and bond interest fund of said district and applied upon the payment of the bonds and coupons of said petitioners.

And it further appearing that there are no other obligations on the bonds of said district which are due or will become due before January 1, 1938.

(Testimony of James B. Thompson.)

We command you that out of the funds in the bond fund or bond interest fund of said district you pay the said sum to petitioners, or if sufficient funds be not in said funds of said district then that you transfer whatever funds of said district which properly belong in said funds thereto and apply the same upon the payment of said bonds, coupons and interest of said petitioners, or if there be not sufficient funds for payment thereof, that you levy such assessments against the lands of said district to pay the same, and that you continue from year to year to levy such assessments as may be necessary for the payment of the obligations arising upon said bonds and the coupons attached thereto, or you and each of you will show-cause before this Court in the courtroom thereof in Modesto, California, on the 27th day of December, 1937, at 1:30 o'clock P. M. of that day why you have not done so."

JAMES B. THOMPSON

was recalled at a witness, this time for respondent, and this time testified: Pursuant to the resolution of the R. F. C. granting the loan to the District the District made certain semi-annual reports to the R. F. C. Also pursuant to the resolution, the District submitted its budget each year to the R. F. C.

(Testimony of James B. Thompson.)

for inspection and approval before the levies were made.

Words and figures from the balance sheet for the period ending December 31, 1935, were read into evidence. The sheet showed capital assets, general properties, \$441,000, total capital assets \$451,000; Capital liabilities, \$252,500, Capital Surplus, \$157,554.91. These latter two were admitted over the objection of petitioner.

There was read into evidence from the financial statement as of July 1, 1936, the following: Liabilities—Capital Bond Account, R.F.C., \$252,500; Bond Account, Mason, \$29,000. Bond Account, unknown, \$1,000. Land deeded to the District for taxes, \$160,430, making a total of \$448,930. Objection of petitioner to these was overruled.

The witness stated that the statement was correct.

A letter dated December 3, 1936, on the letterhead of the R.F.C., Washington, and addressed to J. B. Thompson, Secretary of the Paradise Irrigation District, was read into evidence as follows:

"We are enclosing herewith blank forms to be used in submitting six copies of the next semi-annual report for the above named district covering the period July 1, 1936 to January 1, 1937, and we greatly appreciate your cooperation in a prompt submission of this report."

(Testimony of James B. Thompson.)

The following from the report of January 1, 1937, was read in evidence:

"Complete detailed financial statement"

With the first division being "Assets". Total current assets listed here \$27,164.62. Next division is current liabilities, [86] total \$9,478.11. Next division is capital assets; general properties \$448,500 and "other items including assessment roll: Land carried, \$351,215. Total capital assets \$818,130.35". Then the last period reports "Total capital assets, capital liabilities, bond account R.F.C. \$233,643.66. Bond account Mason, \$29,000; bond account unknown, \$1,000. Land deeded to the district for taxes, \$141,020. Depreciation of pipe, line, 6%, \$6,000; Total, \$410,603.66."

The witness testified there was an item on the book called "R.F.C. Reserve", a reserve built up for contingencies to meet the total requirements of the bonds plus interest.

A letter from the R. F. C. to J. B. Thompson, secretary of the District, dated April 22, 1936, was received in evidence as Respondent's Exhibit 6.

A letter from the R. F. C., Washington, headlined San Francisco, California, January 9, 1937, to the Paradise Irrigation District was received in evidence as Respondent's Exhibit 7.

Th resolution contained on page 34 of minute book No. 3 of the Paradise Irrigation District was received in evidence as Respondent's Exhibit 8. Resolutions on page 34, being the portions particu-

(Testimony of James B. Thompson.)

larly referred to by respondent. On page 55 of the same minute book, dated August 30, 1937, the following resolution was read in evidence.

"It was moved, seconded and carried that the secretary be authorized to advise the R. F. C. that \$29,000 of original bond issues are outstanding and unrefinanced."

From minute book No. 2, which is the District's Exhibit No. 3, page 177 was received in evidence, and from page 187 the following was read in evidence:

"Be it further resolved that all money received from tax redemption and applicable to bond interest fund be and the same is ordered credited to R. F. C. bond reserve fund." [87]

Pages 282, 186 and a resolution commencing on page 249 and ending at the top of page 250 were also received in evidence.

Financial statement as of December 31, 1938, was received in evidence as Respondent's Exhibit 9.

It was stipulated that page 249 of minute book No. 2 was a resolution levying assessments for that year, 1936. That page 61 of minute book No. 3 is the tax levying assessment adopted September 1937, for the year 1938.

From minute book No. 3 a resolution commencing in the middle of page 61 and ending on the top of page 62 was received in evidence. Also a report rendered to the R. F. C. commencing page 152 of

(Testimony of James B. Thompson.)

minute book No. 3. Also resolution commencing bottom of page 238 and ending at middle of page 239 of minute book No. 2, which was the tax levying assessment for the year 1939.

Letter with a heading Reconstruction Finance Corporation, April 30, 1938, to Paradise Irrigation District was received in evidence as Respondent's Exhibit 10.

RESPONDENT'S EXHIBIT 10:

Respondent's Exhibit 10 was a letter from the Reconstruction Finance Corporation to the Paradise Irrigation District, dated April 30, 1938, reading in part as follows:

"We are making our regular audit of the SAN FRANCISCO Custodian of the Reconstruction Finance Corporation as at the close of business APRIL 18, 1938 and submit the following data with respect to the status of the above-numbered loan at that date, as reflected on the records of the Custodian: [121]

Unpaid Loan Balance.....	\$233,643.66
Total Collateral Pledged (Detail list of collateral and sub-collateral enclosed).....	446,000.00
Collateral in Your Hands for Collection, etc., (List enclosed).....	none
Funds Held in Suspense and Not Applied.....	none
Interest Paid.....	23,350.48

Kindly check the above information with your records and certify to the correctness thereof by signing the enclosed copy of this.

(Testimony of James B. Thompson.)

letter. Explain in detail any exceptions or differences noted."

A statement, Paradise Irrigation District, May 13, 1938, Unpaid Loan Balance, \$234,168.87; Total collateral pledged, \$447,000. "The above information is in agreement with our records," was received in evidence as Respondent's Exhibit 11.

A letter dated June 30, 1936, from the R. F. C. to Mr. Thompson was received in evidence as Respondent's Exhibit 12.

A letter of July 2, 1936 from the R. F. C. to Mr. Thompson was received in evidence as Respondent's Exhibit 13.

A letter of July 7, 1936, from Paradise Irrigation District to the R.F.C. was received in evidence as Respondent's Exhibit 14.

RESPONDENT'S EXHIBIT 14:

Respondent's Exhibit 14 was a letter dated July 7, 1936, from J. B. Thompson, Superintendent and Secretary of Paradise Irrigation District, to Frank J. Keenan, Chief of the Drainage, Levee and Irrigation Division of the R. F. C., and reading in part as follows:

"Answering your letter of June 30th. I am happy to say that Paradise Irrigation District easily made the interest payment which you kindly inquired about,

(Testimony of James B. Thompson.)

Unless something untoward occurs in economics worse than we have heretofore experienced, it is my belief that Paradise Irrigation District will be able to meet its future interest payments as has been done this time."

A letter from the R.F.C. to Mr. Thompson, sent [88] September 15, 1936, was received in evidence as Respondent's Exhibit 15.

A letter from Paradise Irrigation District to the R.F.C. dated January 15, 1937, was received in evidence as Respondent's Exhibit 16.

RESPONDENT'S EXHIBIT 16:

Respondent's Exhibit 16 was a letter dated January 15, 1937, from J. B. Thompson, Secretary of Paradise Irrigation District, to Frank J. Keenan, of the R. F. C., stating in part as follows:

"Paradise Irrigation District coupons as paid are pasted into a bond volume in which the bonds and serially numbered coupons are listed. In this way the coupons as rapidly as taken up by the District are evidenced as being paid.

July 1st, 1936, the treasurer, Mr. Clark, registered all the unpaid coupons of Paradise Irrigation District bonds and these have been disposed of in the manner outlined above. To make this record complete it occurred to Mr. Clark

(Testimony of James B. Thompson.)

that inasmuch as unmatured coupons have been registered on all the bonds, those previously registered and which might properly be termed as having been paid could for the sake of completing our record be also returned to this office." [122]

A letter from the R.F.C. to the Federal Reserve Bank, copy of letter February 25, 1937, was received in evidence as Respondent's Exhibit 17.

RESPONDENT'S EXHIBIT 17:

Respondent's Exhibit 17 was a letter dated February 25, 1937, from H. A. Mulligan, Treasurer of the Reconstruction Finance Corporation, directed to J. M. Osmer, Assistant Cashier, Federal Reserve Bank of San Francisco, reading in part as follows:

"You are hereby authorized to forward for cancellation a sufficient face amount of coupons of the earliest maturity dates to evidence interest payment due this Corporation January 1, 1937. In order to reflect a payment of less than the face amount of a given coupon, you should request the District Treasurer to make a credit notation on so many coupons as may be necessary, returning the coupons so endorsed to you. Such endorsed coupons, as collateral for this loan, shall be retained by you until fully paid."

(Testimony of James B. Thompson.)

A letter from the R.F.C. to the District on June 9, 1937, was received in evidence as Respondent's Exhibit 18.

A letter from the R.F.C. to the District, August 19, 1937, was received in evidence as Respondent's Exhibit 19.

RESPONDENT'S EXHIBIT 19:

Respondent's Exhibit 19 was a letter dated August 19, 1937, from the Reconstruction Finance Corporation to the Secretary of Paradise Irrigation District reading as follows:

"Our records indicate that \$29,000 of old bonds of the above district remain outstanding which have not been presented for refinancing.

We would greatly appreciate your advising us by return mail if possible, the names of the owners of any such bonds which have not been presented, and the amount of bonds held by each known owner."

A similar letter, dated August 21, 1937, was received in evidence as Respondent's Exhibit 20.

A letter, dated September 1, 1937, from the Paradise Irrigation District to the R.F.C. was received in evidence as Respondent's Exhibit 21.

(Testimony of James B. Thompson.)

RESPONDENT'S EXHIBIT 21:

Respondent's Exhibit 21 was a letter, dated September 1st, 1937, from J. B. Thompson, Secretary of Paradise Irrigation District to the Reconstruction Finance Corporation, reading as follows:

"Answering your letter of August 18th, 1937. Your records indicating that \$29,000.00 of the original bond issues, Paradise Irrigation District, are outstanding, is correct. These bonds are represented by J. Rupert Mason, San Francisco, California.

The Board of Directors expect to take advantage of any refinancing possibilities that may be available under the new bankruptcy act."

A letter from the R.F.C. to the District, April 1, 1938, was received in evidence as Respondent's Exhibit 22.

The witness testified there was one one-thousand dollar bond that was acquired by the district during these refinancing proceedings with money supplied by the R.F.C.

The witness further testified that after the former bankruptcy proceeding had been terminated, Respondent J. R. Mason and his counsel came up to Paradise in the year 1936 to discuss payment of interest coupons of Mr. Mason and talked with the

(Testimony of James B. Thompson.)

witness and with Mr. Clark, who was the treasurer of the district. Mr. Mason made a threat of bringing an action to collect his interest, demanding that his coupons be paid. Subsequently, a large sum of interest was paid to Mr. Mason in two different payments. The amount so paid were as follows: \$1077.66 in November, 1936, and \$1958.29 in January, 1937. [89]

Thereupon, appellant and respondent showed a letter bearing the purported signature of W. S. Clark, Treasurer, to the witness, who identified the signature as that of Mr. Clark's, and the letter was then marked Respondent A for identification and was thereupon offered in evidence. Counsel for the District objected to it on the grounds that it was incompetent, irrelevant and immaterial and not binding upon the District, as to Mr. Clark's conclusion, he being the duly elected Treasurer, and could not bind the District. The court sustained the objection. Respondent Exhibit A for identification reads as follows:

(Testimony of James B. Thompson.)

"RESPONDENT A IDENT

7703 Paradise

**Irrigation Districts Association of California
Member**

Paradise Irrigation District

**Comprising 11,250 acres of Orchard land on the
slopes of the Sierra Nevada Mountains in
Butte County**

**Paradise, California
November 18, 1936.**

**Mr. Coburn Cook
Berg Building
Turlock, California
Dear Mr. Cook:**

Answering your letter of November 13th. You will appreciate, Mr. Cook, that the matter of withdrawing \$3911.22 from the District's funds without first giving the Board of Directors an opportunity to cooperate in such payment might be considered rather hasty. In as much as but two weeks remain until the next Board meeting, I am asking that you defer action until after that date.

I feel certain that there is no disposition on the part of the Board of Directors to withhold from Mr. Mason that which is rightfully due him, now that the manner of settlement proposed last year is not possible. In any event I wish to acknowledge by this letter that I recog-

(Testimony of James B. Thompson.)

nize Mr. Mason's claim as a valid one in regard to the earlier registrations and have no disposition to cause you to bring action for collection. Funds are not now available to take care of the entire amount and I will be glad to have you advise me if payment of an amount as large as possible immediately after the Board meeting Tuesday, December 1st, will be acceptable. [90]

In the meantime let me assure you again that it is not necessary that legal action be brought to collect.

Yours very truly,

PARADISE IRRIGATION
DISTRICT

W. S. CLARK

Treasurer"

WSC:H

After that visit, which was along in November, 1936, the District and its officers made payments of interest to Mr. Mason. A first payment of \$1,077.66 and a second payment of \$1,958.29, the latter payment being made in January, 1937, as the witness recalls it. The payments were all made for interest coupons which matured prior to that date. Counsel stipulated that this was so.

(Testimony of James B. Thompson.)

On

Cross Examination

by counsel for petitioner, the witness testified: As to financial report made to the R.F.C. in 1935 under the title "Bonds authorized \$252,500," the bonds at that time were printed but not delivered. They had not been delivered up to March 6th, 1939, when the witness finished as secretary. The method of carrying the money that the R.F.C. paid out to get the bonds was provided in the contract of the R.F.C. Under that arrangement, the District only paid 4% to the R.F.C. on the money that the R.F.C. actually paid out to acquire the old bonds.

HOWARD S. CLEWETT

was recalled as a witness for respondent and testified: He was secretary for several years prior to and at the time the application was made to the R.F.C. for the loan, and also was attorney in the Bankruptcy proceeding until it was dismissed. Around \$3,700 was paid to the Bondholder's Committee to induce the committee to recommend acceptance of the settlement. The committee had certain coupons which had been deposited with it by bondholders for which it was acting, but it did not, itself, control any bonds. His recollection was that the coupons were for 1933 and 1934, and in answer to the [91]. question whether the coupons were turned in with the bonds or reattached to the bonds,

(Testimony of Howard S. Clewett.)

the witness answered that they were turned to the R. F. C. by the committee. The payment was made to the Committee based on a number of those coupons in lieu of paying the Committee any Bondholder's Committee expenses. The bondholders simply got \$525.21 plus interest at 4% per annum from July 1, 1934, except what they may have received from the Bondholder's Committee. The witness did not know what the Committee may have disbursed to the bondholders.

On

Cross Examination

by counsel for the District, the witness testified that the R. F. C. did not enter into the transaction of the payment of the \$3,700 at all, except that the R. F. C. knew the District was making the payment. The payment was made from the District funds and not from money obtained through the R.F.C.

It was stipulated that all bondholders, including Mr. Mason, got the \$10 on the July 1, 1934 coupon.

JAMES R. MASON,

Respondent, was called as a witness on his own behalf and testified: The claim of Mr. Mason, with notice to creditors which he received requiring him to file a claim was received in evidence as Respondent's Exhibit 23.

(Testimony of James R. Mason.)

RESPONDENT'S EXHIBIT 23:

Respondent's Exhibit 23 was the proof of claim of J. R. Mason, respondent, and attached thereto was the Notice to Creditors [123] given by the Paradise Irrigation District, stating that the petition of the District for composition of debts had been filed December 21, 1937, and further stating:

"The plan of composition materially affects the holders of all outstanding bonds and other securities of the district, as it will, if put into effect, require the holders of such indebtedness to surrender same and receive in exchange therefor in cash the sum of 52.521 cents for each dollar of the principal amount of their respective claims, exclusive of interest, with deductions for missing coupons as follows: for all appurtenant unpaid interest coupons maturing on or before July 1, 1934, which are missing, there shall be deducted from the amount payable on such bond 45.67 cents for each dollar of the face amount of such missing coupon, and for all appurtenant unpaid interest coupons maturing subsequent to July 1, 1934, which are missing, there shall be deducted from the amount payable on such bond the full face value of such coupon. Provided, however, that where deductions are made on account of missing coupons and such missing coupons are afterward presented for payment, the holders thereof shall

(Testimony of James R. Mason.)

be paid the sum deducted on account of the missing coupon."

"In the District Court of the United States, for the Northern District of the State of California.

No. 7703

In the Matter of Paradise Irrigation District,

PROOF OF CLAIM

J. R. Mason, being first duly sworn, says:

That he is a creditor of Paradise Irrigation District, the petitioner herein, and that he is the owner and holder of the following described bonds of said district, to-wit: bonds numbered 93, 94, 95, 96, 97, 170, 171, 257, 258, 293 of the first issue, and bonds numbered 23, 24, 25, 35, 36, 46, 47, 81, 82, 94, 95, 96, 97, 98, 106, 107, 108, 109, and 110 of the second issue, each of the par value and sum of \$1000.00; and that of said bonds some have matured, to-wit; bonds numbered 23, 24 and 25, in the principal sum of \$3000.00, which bonds matured July 1, 1937, and were presented for payment to the Treasurer of Paradise Irrigation District when they became due and payment demanded, and that the same are wholly unpaid and that the said matured bonds bear interest at the rate of 7% per annum from date of such presentation, and that said creditor has not been notified that funds are available for payment thereof; that

(Testimony of James R. Mason.)

each of said bonds bear interest at the rate of 6% per annum, evidenced by interest coupons payable on January 1st and July 1st of each year; that said J. R. Mason is the owner of all of the coupons attached to said bonds, of which coupons in the amount of \$3390.00 have matured and were presented to the treasurer for payment, together with interest thereon at the rate of 7% per annum from [124] date of presentation to date of payment; that affiant by this proof of claim does not submit himself to the jurisdiction of this court except for the special purpose of objecting to the jurisdiction of this court.

J. R. MASON

Subscribed and sworn to before me this 9th day of March, 1938.

(SEAL)

LESTER H. SHOCK

Notary Public, Stanislaus County, California

This Exhibit 23, which is an approval of claim, sets forth Mr. Mason to be the owner of twenty-nine \$1,000 bonds, and at the time the claim was made there were 6% interest coupons, amounting to \$3,390, past due and unpaid. The witness testified he had regularly presented his past-due coupons to the treasurer for payment at the regular six-months period. They have not been paid but have been stamped by the treasurer as provided under Section

(Testimony of James R. Mason.)

52 of the California Irrigation District Act. He had never been notified that funds were available for payment of the coupons. The coupons so described were separate and apart from the interest coupons that were paid to Mason and which were [92] 1936 and prior years. To the best of the witnesses' recollection these coupons are those that matured in 1937, 1938 and partly 1936. A duplicate of an original document deposited with the Pacific National Bank was received in evidence as Respondent's Exhibit 24.

RESPONDENT'S EXHIBIT 24:

Respondent's Exhibit 24 was an escrow letter dated September 7, 1933, signed by J. R. Mason and directed to Pacific National Bank of San Francisco, reading as follows:

"At the request of the Paradise Irrigation District Bondholders Protective Committee I am enclosing herewith—Coupons No. 32 to 38, inclusive, from bonds of the First Issue, dated May 1, 1917, numbered as follows: 170, 171, 257, 258, 293.

Coupons No. 25 to 31, inclusive, from bonds of the Second Issue, dated July 1, 1920, numbered as follows: 23, 24, 25, 35, 36, 81, 82, 94, 95, 96, 97, 98, 106, 107, 108, 109, 110, xxx which coupons shall hereafter be subject to the order of the Paradise Irrigation District Bondholders Protective Committee."

(Testimony of James R. Mason.)

A letter that the witness received from Mr. Stephens of the Bondholders' Committee referring to the \$10 payment for July 1934 coupons was received in evidence as Respondent's Exhibit 25.

RESPONDENT'S EXHIBIT 25:

Respondent's Exhibit 25 was a letter dated January 13, 1934, from George Stephens, executive secretary of the Bondholders Protective Committee, directed to J. R. Mason, reading as follows:

"We have made an arrangement with the Paradise district for payment of \$10.00 per coupon for the July 1933 coupons. This, together with the sum of \$8.80 per coupon received from them for the January 1933 coupons, makes a total of \$18.80. The Committee's expenses to date are, roundly, \$5.80, and it is our plan to make a disbursement to bondholders of \$10.00 per \$1000 bond. In pursuance with our letter to you of September 7, will you please signify your approval of the attached copy of this letter of relinquishment to the District of your July 1933 coupons deposited with us?" [125]

The bondholders, including the witness, consented to compromise of the ordinary interest on the coupons. Five years' coupons were on deposit with the committee, the witnesses' recollection being that they are the coupons for 1933 to 1938. George

(Testimony of James R. Mason.)

Stephens, secretary of the Bondholders' Committee, told the witness that over 90% of the bondholders had deposited their coupons with the committee. The committee was authorized to establish whatever, determined upon an investigation, might be reasonable as an interest rate to be paid to the bondholders.

HOWARD S. CLEWETT

was recalled as a witness for petitioner and testified: The arrangement with the Bondholders' Committee was that it would accept a reduction in interest up until some refinancing program could be agreed upon but only for two years. The initial term was not to exceed two years, but if during that time a refinancing program was agreed upon, we would go ahead with the plan; if not, he might endeavor to get a further extension. The number of coupons which the committee held was the means of determining how much should be paid to induce them to recommend acceptance of this settlement.

[93]

[Title of District Court and Cause.]

STIPULATION.

It Is Hereby Stipulated that the foregoing constitutes a full, true and correct condensed statement in narrative form of all of the testimony in

said cause including admissions, concessions and stipulations of counsel, and designations of exhibits, and also is a correct statement of essential motions, rulings, and proceedings of the court prior to submission of the cause, and as such the same may be designated and used as a part of the record on appeal in said cause in lieu of the testimony of witnesses in question and answer form and the setting out at length of admissions, concessions and stipulations of counsel and motions, rulings and proceedings covered.

It Is Further Stipulated that the several exhibits offered by the respective parties and received by the court or pertinent parts thereof may be set forth in an Appendix to the foregoing condensed statement or summarized therein and that such stipulations, extracts or condensations shall be by the printer, under the direction of the Clerk of the Court, inserted in the foregoing narrative statement at the appropriate places so as to produce when printed a complete and comprehensive [94] statement of all the evidence offered or received at the hearing on the petition herein.

Dated: July 28, 1941.

W. COBURN COOK,

Attorney for Appellant,

JEROME D. PETERS,

Attorney for Appellee.

[Endorsed]: Filed Sept. 23, 1941. Walter B. Maling, Clerk. [95]

**CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT ON APPEAL.**

I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 125 pages, numbered from 1 to 125, inclusive, contain a full, true and correct transcript of certain records and proceedings in the matter of the Paradise Irrigation District, No. 7703, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the Designation and Counter Designation of Portions of Record on Appeal and Stipulation, copies of which are embodied herein.

I further certify that the cost of preparing and certifying the foregoing record on appeal is the sum of Twenty-two and 55/100 (\$22.55), and that the same has been paid to me by the attorney for the appellant herein.

In witness whereof, I have hereunto set my hand and the official seal of said District Court, this 26th day of September, A.D. 1941.

WALTER B. MALING, Clerk

By F. M. LAMPERT

Deputy Clerk [126]

[Endorsed]: No. 9925. United States Circuit Court of Appeals for the Ninth Circuit. J. R. Mason, Appellant, vs. Paradise Irrigation District, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division.

Filed September 27, 1941.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals for
the Ninth Circuit

No. 9925

J. R. MASON,

Appellant,

vs.

PARADISE IRRIGATION DISTRICT,

Appellee.

DESIGNATION OF RECORD FOR PRINTING

The appellant designates the following as those parts of the record as necessary for the consideration of the points upon which the appellant intends to rely in this appeal and for printing, to wit:

The entire record on appeal, consisting of Transcript pages 1 to 126, inclusive, except omit the following: Omit pages 20, 49, 50 and 57 (affi-

davits of service); omit pages 23, 24, 25 (minutes of the court); omit waiver, page 61; omit stipulations, pages 62 and 64.

Dated: October 6, 1941.

W. COBURN COOK

Attorney for Appellant.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

The appellant adopts as the points on appeal on which he intends to rely the statement of points appearing in the transcript, these points having been designated and filed in the District Court.

Dated: October 6, 1941.

W. COBURN COOK

Attorney for Appellant.

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California

County of Stanislaus—ss:

E. Julien, being first duly sworn, says: That she is a citizen of the United States, residing in the City of Turlock, Stanislaus County, California, where the mailing hereafter referred to took place;

that she is over the age of 21 years and not a party to the above entitled cause; that on the 7th day of October, 1941, she deposited in the U. S. Post Office at Turlock, California, a true copy of the Designation of Record for Printing and Statement of Points on which Appellant Intends to Rely on Appeal, the original of which is hereunto affixed, enclosed in a sealed envelope with postage thereon fully prepaid, addressed to Mr. Jerome D. Peters, 304 Broadway, Chico, California, the attorney of record for the above named appellee. That there is regular communication by mail between the place of mailing and the place so addressed.

E. JULIEN

Subscribed and sworn to before me this 7th day of October, 1941.

(Seal) GILBERT MOODY

Notary Public in and for the County of Stanislaus,
State of California.

[Endorsed]: Filed Oct. 8, 1941. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF APPELLEE OF ADDITIONAL PARTS OF RECORD FOR PRINTING

The appellee designates the following as additional parts of the record as necessary for the consideration of the points upon which the appellee intends to rely in this appeal for printing, to wit:

The stipulated "Narrative Statement of Facts," and the stipulated "Summary of Exhibits."

Dated: October 10, 1941.

JEROME D. PETERS

Attorney for Appellee

[Endorsed]: Filed Oct. 13, 1941. Paul P. O'Brien,
Clerk.

CLERK'S COPY.

Vol. II

TRANSCRIPT OF RECORDS

(Pages 27 & 28)

Supreme Court of the United States

OFFICE OF THE CLERK

No. 306

U. S. DEPT. OF JUSTICE

RECORDS SECTION

RECORDS SECTION, U. S. DEPT. OF JUSTICE

RECORDS SECTION, U. S. DEPT. OF JUSTICE

RECORDS SECTION, U. S. DEPT. OF JUSTICE

No. 9925

United States
Circuit Court of Appeals
For the Ninth Circuit.

J. R. MASON,

Appellant,

vs.

PARADISE IRRIGATION DISTRICT,

Appellee.

SUPPLEMENTAL
Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Northern Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Amendment to Answer of J. R. Mason	181
Amendment to Interlocutory Decree	200
Answer of J. R. Mason, Amendment to	181
Certificate of Clerk to Transcript of Rehearing	203
Designation of Supplemental Transcript of Record	211
Findings of Fact and Conclusions of Law on Rehearing	185
Interlocutory Decree, Amendment to	200
 Minute Orders:	
May 14, 1942—Order Remanding Cause for Findings, etc.	173
Oct. 14, 1942—Hearing	183
Mar. 25, 1943—Order Granting Motion to Set Aside Oral Stipulation and Setting Date for Hearing	184
June 18, 1943—Order Granting Motion to Strike Amendment to Answer and Deny- ing Motion to Amend Plan of Composi- tion	184

Motion to Set Aside Oral Stipulation and to Set Date for Hearing	174
Exhibit "A"—Stipulation Regarding Interpretation of Plan of Composition ..	178-a
Exhibit "B"—Affidavit of H. S. Clewett ..	178-b
Objection to Motion to Set Aside Oral Stipulation and to Set Date for Hearing	178-f
Order Granting Motion to Set Aside Oral Stipulation and Setting Date for Hearing ...	184
Order Granting Motion to Strike Amendment to Answer and Denying Motion to Amend Plan of Composition	184
Order Remanding Cause for Findings, etc.	173
Praecipe	201
Reporter's Transcript (Excerpts)	205
Proceedings in U. S. C. C. A., Ninth Circuit ..	213
Order of submission	214
Order directing filing of opinion and decree ..	214
Opinion, Stephens, J.	215
Decree	217
Clerk's certificate	218
Order allowing certiorari	219

At a Stated Term, to wit: The October Term, 1941, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Thursday the fourteenth day of May in the year of our Lord one thousand nine hundred and forty-two.

Present:

Honorable Francis A. Garrecht, Circuit Judge,
Presiding,

Honorable Clifton Mathews, Circuit Judge,

Honorable Albert Lee Stephens, Circuit Judge.

No. 9925

J. R. MASON,

Appellant,

vs.

PARADISE IRRIGATION DISTRICT,

Appellee.

ORDER REMANDING CAUSE FOR
FINDINGS, ETC.

Upon appeal from the District Court of the United States for the Northern District of California, Northern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of California, Northern Division, and was duly submitted:

On Consideration Whereof, It is now hereby ordered by this Court that this cause be, and hereby

is remanded to the said District Court with directions to make specific findings bearing on the question of the maximum amount that the District is reasonably able to pay its bondholders in the circumstances, either with or without the taking of additional evidence as said District Court in its discretion may determine. See *Lorber v. Vista Irrigation District*, 127 Fed. (2d) 628 (CCA 9 Apr. 16, 1942) *Consolidated Rock Products Co. et al. vs. DuBois*, 312 U.S. 510, 65 Sup. Ct. 675. The District Court shall further clarify its findings on the question whether the plan of composition provides for deductions from the amount to be paid for coupons which have been voluntarily paid by the Irrigation District.

It Is Further Ordered that the submission of said cause be, and hereby is set aside. -----

(Garrecht, C. J., does not concur.)

In the District Court of the United States for the
Northern District of California, Northern
Division

Federal Court No. 7703

In the Matter of

PARADISE IRRIGATION DISTRICT

NOTICE OF MOTION TO SET ASIDE ORAL
STIPULATION, AND TO SET DATE FOR
HEARING

To J. R. Mason, Respondent, and to W. Coburn
Cook, Attorney for Respondent.

You and Each of You Will Please Take Notice

that the Paradise Irrigation District, petitioner in the above entitled matter, will upon the 1st day of February, 1943, at the hour of ten o'clock A.M., in the Courtroom of the above entitled Court, situated in the Federal Building located in the City of Sacramento, County of Sacramento, State of California, move the above entitled Court as follows, to wit:

1. To set aside an oral stipulation entered into by the parties in open Court on Wednesday, the 14th day of October 1942, a copy of which oral stipulation is attached hereto, and marked Exhibit "A", and made a part hereof.

2. In the event the Court orders the setting aside of the stipulation referred to in the preceding paragraph, for [1*] an order of the Court setting the time and place for the taking of testimony in the above matter bearing on the question of the maximum amount that the district is reasonably able to pay its bondholders in the circumstances, and what is the procedure in respect to interest coupons of the District maturing after July 1, 1934, which were paid by the District to respondent J. R. Mason, for the purpose of the above Court making specific findings upon such question, as required in that certain order made by the United States Circuit Court of Appeals for the Ninth Circuit in the appeal pending before it, entitled "J. R. Mason, Appellant, v. Paradise Irrigation District, Appellee", and which was an appeal from the interlocutory judgment rendered and entered

*Page numbering appearing at foot of page of original certified Transcript.

therein, which said appeal to said Circuit Court was No. 9925, and which said order remanding the cause to the above Court for such findings was made on the 14th day of May, 1942, and in which the said United States Circuit Court of Appeals remanded the above entitled cause to the above District Court for the making of the specific findings as to the maximum amount that the district is reasonably able to pay its bondholders in the circumstances, and what is the procedure in respect to interest coupons of the District maturing after July 1, 1934, which were paid by the District to respondent J. R. Mason.

The ground of said motion will be that said oral stipulation was entered by the parties in open Court subject however to later being reduced to writing and executed by the parties; that it was reduced to writing and executed by the respondent through his counsel, but was not executed by the District, or any one in its behalf, for the reason that immediately following the stipulation, the proposed terms of said stipulation were submitted to the Reconstruction Finance Corporation in Washington, D. C., which corporation is the [2] one advancing to the District the money with which to effect the proposed settlement referred to in these proceedings and, in said stipulation, and the said Reconstruction Finance Corporation upon being advised of the terms of said stipulation, advised the petitioner it would not consent thereto, upon the ground that the effect of said stipulation was to

change the terms of the proposed composition, and unless the stipulation was withdrawn and declared null and void and of *not* effect, it would not consent to the composition plan entailed therein as so changed, and would withdraw its consent thereto and would not advance to the District the required money to effect the same. That these proceedings were initiated by the District under public No. 302-75, Chapter 657—First Session, approved August 16, 1934, which act is an amendment to "an act to establish a uniform system of bankruptcy throughout the United States" as approved July 1, 1898. That under the terms and provisions of said act, before a composition may be effected, holders of $\frac{2}{3}$ or $66\frac{2}{3}$ per cent of the outstanding bonded indebtedness of the District must consent thereto. That the Reconstruction Finance Corporation is the owner of over 92 per cent of the petitioner's bonded indebtedness involved in these proceedings, and has consented to the proposed plan of composition as set out in the petition on file, but if said corporation refuses its consent, which it has done, to the change in the plan as set forth in the stipulation hereby sought to be set aside, no decree approving the composition may be validly entered. That unless said stipulation be set aside by order of this Court, the entire composition program of petitioner will be jeopardized, and all the proceed-

ings taken by it to effect such composition will be fruitless and of no effect.

Said motion will be based upon this written notice, [3] upon the oral stipulation entered in open Court upon Wednesday, October 14, 1942, a copy of which is hereto attached, and marked Exhibit "A", and upon the affidavit of H. S. Clewett, one of counsel for petitioner, which is attached hereto and is marked Exhibit "B", and is hereby made a part hereof.

Dated: This 11th day of January, 1943.

JEROME D. PETERS

H. S. CLEWETT

Attorneys for Petitioner

Paradise Irrigation District

EXHIBIT "A"

At a stated term of the Northern Division of the United States District Court of the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Wednesday, the 14th day of October, in the year of our Lord one thousand nine hundred and 42.

Present: The Honorable Martin I. Welsh,
District Judge.

No. 7703

In the Matter of

PARADISE IRRIGATION DISTRICT,

Debtor.

This case came on regularly this day for the hearing of testimony to enable the Court to make findings of fact and conclusions of law. Jerome D. Peters, Esq., and H. S. Clewett, Esq., were present for and on behalf of the debtor. W. Coburn Cook, Esq., was present for and on behalf of J. R. Mason, the respondent. Mr. Peters and Mr. Cook stipulated that the plan of composition may be interpreted as approved by Mr. Mason, upon certain conditions; First that there be no deduction from Mr. Mason's pro-rata share due him under the terms of the plan of composition and that he retain the \$3,000 heretofore paid him on account of interest due on coupons. It is further Ordered that Mr. Mason be paid an additional sum of \$1,000

from District funds on account of expenses incurred on the appeal heretofore taken. It is further Ordered that Mr. Cook will dismiss the appeal now pending upon fulfillment of the conditions. It is further Ordered that Mr. Peters prepare findings of fact and conclusions of law and a judgment and submit the same to the Court.

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest:

(Seal) C. W. CALBREATH,

Clerk, District Court of the U. S., Northern District of California.

By F. M. LAMPERT
Deputy Clerk

EXHIBIT "B"

In the District Court of the United States for the Northern District of California, Northern Division

Federal Court No. 7703

In the Matter of

PARADISE IRRIGATION DISTRICT.

AFFIDAVIT OF H. S. CLEWETT

State of California,
County of Butte—ss.

H. S. Clewett, being first duly sworn, deposes and says: That he is a citizen of the State of Cali-

foria, United States of America, is over the age of twenty-one years, and is a duly licensed and practising attorney, at law, with his office in Paradise, Butte County, California, and that he is one of counsel for petitioner Paradise Irrigation District in the above matter. That Jerome D. Peters, of Chico, Butte County, California, is co-attorney for said petitioner with affiant.

That at the time of the hearing of the above matter, namely October 13, and 14, 1942, before the above entitled Court in Sacramento, California, efforts were made to compromise the matter. The first offer of the respondent J. R. Mason moving toward a compromise was not accepted by the District because of the fact that affiant and his co-counsel would not approve the offer until the consent of the Reconstruction Finance Corporation was obtained for the reason that such corporation owns over 92 per cent of petitioner's bonded indebtedness involved herein, and under the act under which the proceedings were brought, a jurisdictional fact before a decree could be entered approving the compromise, was that 66 2/3 per cent of the owners of such indebtedness must consent in writing to the plan:

After the first offer of respondent was rejected, another offer was made, which seemed not to involve the Reconstruction Finance Corporation, inasmuch as certain monies were to be paid the respondent Mason, but they were to come from the

finances of the District as distinguished from finances to be advanced the District by the Reconstruction Finance Corporation, and it was assumed by counsel that the Reconstruction Finance Corporation would have no objection thereto. It was impossible to get a telephone line through to the Reconstruction Finance Corporation in Washington, D. C. and affiant and members of the Board of the District and co-attorney Jerome D. Peters thought that the plan offered was satisfactory, and that the Reconstruction Finance Corporation would not object thereto. Thereupon counsel for respective parties informed the Court that they had reached an agreement which was stated orally in Court, and which was agreed to be reduced to writing and ultimately executed by the parties. The oral stipulation is attached to these papers and is marked Exhibit "A". That such oral agreement was reduced to writing, but never executed by petitioner or anyone in its behalf.

That subsequently affiant informed the Reconstruction Finance Corporation of the agreement reached, and subsequently was advised that the Reconstruction Finance Corporation would not approve the agreement, for the reason that under it the respondent J. R. Mason received advantages and monies that the original bondholders who accepted the composition did not receive, and affiant received a letter from such corporation to that effect, and stating that the plan under the agree-

ment reached under said oral stipulation was a different plan from the one it consented to when the proceedings were initiated, and that the law requires such corporations' consent to any modification of the original plan, and it would not give it, and if steps were not taken to have such stipulation set aside, it would withdraw its consent; this will jeopardize the whole composition plan of the District, for the Reconstruction Finance Corporation agreed only to advance the monies to the District to effect a composition under the original plan, and it will not do so under the changed plan, whereby the respondent Mason receives such additional advantages and monies.

This affidavit is made to support the motion which it accompanies and to set aside such stipulation and to set a time and place for the hearing of the matter on its merits.

That it is of ultimate importance to the District and its members that the composition be effected; that the future of the District depends upon such composition, and that plans of the District for the future will be entirely futile if the plan of composition whereby the District is to pay some 52 cents upon each dollar of indebtedness be not consummated.

H. S. CLEWETT

Subscribed and sworn to before me this 11th day of January, 1943.

RUTH GRINNELL

Notary Public in and for the County of Butte,
State of California.

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest:

[Seal]

C. W. CALBREATH,

Clerk, District Court of the
U. S. Northern District of
California.

By F. M. LAMPERT
Deputy Clerk

[Endorsed]: Filed Jan. 13, 1943. Walter B.
Maling, Clerk. [4]

[Title of District Court and Cause.]

**OBJECTION TO MOTION TO SET ASIDE
ORAL STIPULATION AND TO SET DATE
FOR HEARING**

Comes now J. R. Mason, respondent, by and through his counsel, W. Coburn Cook, and objects to the motion to set aside oral stipulation and set date for hearing calendared to be heard February 1, 1943, and in opposition thereto states:

I.

That said stipulation, made in open court October 14, 1942, was made freely and openly and without duress or fraud, and that the same does not provide that it should be reduced to writing, and that thereupon the court caused to be entered in

the matter, its order that the stipulation should be carried out, and that counsel for the petitioner should prepare findings and conclusions of law and a judgment.

II.

That the said counsel did prepare a written stipulation however, and a proposed set of findings, conclusions and [5] judgment, and submitted the same to W. Coburn Cook, counsel for respondent, who has approved the same, and that the said parties are agreed upon the form thereof, but that in fact the making of the written stipulation is not essential, nor was it provided in the oral stipulation.

III.

That as a matter of fact and of justice, this court upon an extended hearing would undoubtedly have provided that no deductions should be made for the \$3,000 paid J. R. Mason on account of interest, and that further the original composition plan provided for the payment of interest to the depositing bond holders from approximately July 1, 1934 until such time as they should deposit their bonds, the interest to be at four per cent (4%) on the composition figure, and such interest if allowed to J. R. Mason would exceed the sum of Four Thousand Dollars (\$4000.00), and that viewed in that light, therefore, even if a deduction were to be made for the \$3,000, it would appear that Mr. Mason would in all fairness be entitled to approximately Four Thousand Five Hundred Dollars (\$4,500.00) by way of such interest; that if the court determines

that he is entitled to claim the full composition figure without deduction of the \$3,000, he may yet be entitled to receive the Four Thousand Five Hundred Dollars (\$4,500.00) interest in addition; that inasmuch as he has abandoned his appeal to the Circuit Court of Appeals, it was not improper that this court should determine that in lieu of his expense incurred therein, he should be allowed his expenses, costs and disbursements, which were roughly estimated at One Thousand Dollars (\$1000.00).

IV.

That the proposed judgment herein is not an amendment of the plan of composition; that it would not be legally [6] possible for the Reconstruction Finance Corporation to withdraw its consent and furthermore, that even if it were an amendment of the plan of composition, the court has authority under Sections 81-83 of the bankruptcy act to make such amendment of a plan of composition as it may consider proper, and which do not adversely effect the consenting creditors, without any notice whatever to such creditors. See Title 11, Section 403 (e).

V.

It is respectfully suggested that the court has no authority to set aside the stipulation but only has authority to withdraw its approval, as to which it is respectfully represented that the court should decline to act.

VI.

Finally, it is not true that the composition plan of petitioner would be jeopardized by the entry of a decree, because obviously the Reconstruction Finance Corporation will be bound by the judgment entered and its only remedy would be by appeal.

Dated this 29th day of January, 1943.

W. COBURN COOK

Attorney for J. R. Mason

Subscribed and sworn to before me this 29th day of January, 1943.

GILBERT MOODY

Notary Public in and for the County of Stanislaus,
State of California

[Endorsed]: Filed Jan. 30, 1943. Walter B. Maling, Clerk. [7]

[Title of District Court and Cause.]

AMENDMENT TO ANSWER OF J. R. MASON

Comes now J. R. Mason, creditor herein, and amends his answer herein by adding Paragraph No. VIII, as follows:

The said J. R. Mason alleges that said plan of readjustment and composition is not fair, equitable, nor for the best interests of the creditors of the district for the reason that said plan of composition and readjustment offers the Reconstruction Finance Corporation, a creditor of said District, refunding bonds in exchange for its claim, but compels J. R.

Mason, holding the same character of claim to accept cash only, and does not offer the said J. R. Mason said refunding bonds in exchange for his claim, and the said plan further allows interest upon the claim of the Reconstruction Finance Corporation from approximately July 1, 1934, at four per cent per annum on the composition price based upon the principal amount of bonds held by the said Reconstruction Finance Corporation, but refuses like interest to the said J. R. Mason [8] and that said plan of composition is unfair and unjust in this respect in the same manner as the plan of composition was unfair in the case of *State of Texas v. Tabasco Consolidated Independent School District*, 133 Fed (2) 196.

Wherefore, J. R. Mason further prays that unless the plan of composition be amended to allow him to receive refunding bonds, the same as the Reconstruction Finance Corporation, that the petition be dismissed; the said J. R. Mason does not hereby consent to the jurisdiction of the court, nor waive any objections heretofore made.

Dated this 17th day of April, 1943.

W. COBURN COOK

Attorney for J. R. Mason

[Endorsed]: Filed Apr. 19, 1943. Walter B. Maling, Clerk. [9]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Tuesday the 14th day of October, in the year of our Lord one thousand nine hundred and forty-two.

Present: The Honorable Martin I. Welsh, District Judge

No. 7703

[Title of Cause.]

This case came on regularly this day for the hearing of testimony to enable the Court to make findings of fact and conclusions of law. Jerome D. Peters, Esq., and H. S. Clewett, Esq., were present for and on behalf of the debtor. W. Colburn Cook, Esq., was present for and on behalf of J. R. Mason, the respondent. Mr. Peters and Mr. Cook stipulated that the plan of composition may be interpreted as approved by Mr. Mason upon certain conditions; First that there be no deduction from Mr. Mason's pro-rata share due him under the terms of the plan of composition and that he retain the \$3,000. heretofore paid him on account of interest due on coupons. It is further Ordered that Mr. Mason be paid an additional sum of \$1,000.00 from District Funds on account of expenses incurred on the appeal heretofore taken. It is further Ordered that Mr. Cook will dismiss the appeal now pending upon fulfillment of the conditions. It is further Ordered that Mr. Peters prepare findings of fact and conclusions of law and a judgment and submit same to the Court. [10]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Thursday, the 25th day of March, in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Martin I. Welsh, District Judge

No. 7703

[Title of Cause.]

The motion to set aside oral stipulation and to set date for hearing having been heretofore heard and submitted, being now fully considered, it is Ordered that the motion to set aside oral stipulation be and the same is hereby Granted, and said case is hereby placed on the calendar for Monday, April 12, 1943, to be set for hearing. [11]

At a stated term of the Northern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City of Sacramento, on Friday the 18th day of June, in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable Martin I. Welsh, District Judge

No. 7703

[Title of Cause.]

The motion to strike amendment to answer, and the motion to amend plan of composition to enable

J. R. Mason and R.F.C. to accept refunding bonds having been heretofore heard and submitted, being now fully considered, it is Ordered that the motion to strike amendment to answer be and the same is hereby Granted. It is further Ordered that the motion to amend the plan of composition to enable J. R. Mason and R.F.C. to accept refunding bonds be and the same is hereby Denied. [12]

[Title of District Court and Cause.]

**FINDINGS OF FACT AND CONCLUSIONS OF
LAW ON REHEARING ON POINTS FOR
WHICH CAUSE WAS REMANDED**

This cause came on regularly before the above entitled Court for hearing in respect to the two points upon which the said cause was remanded to the lower court for further findings and clarification by the United States Circuit Court of Appeals for the Ninth District, which said two points are as follows, to-wit:

1. To make specific findings bearing on the question of the maximum amount that the District is reasonably able to pay its bondholders in the circumstances, and

2. To clarify the findings on the question whether the plan of composition provides for deductions from the amount to be paid for coupons which have been voluntarily paid by the irrigation district.

The rehearing was held before the above entitled court, sitting without a jury, a jury having been

waived by the parties, upon the 20th day of April, 1943; H. S. Clewett and [13] Jerome D. Peters, Esquires, appeared as attorneys for the petitioner, and W. Coburn Cook, Esquire, appeared as attorney for the respondent J. R. Mason; evidence both oral and documentary was introduced, and the matter having been submitted for the decision of the Court, and the Court being fully advised in the premises, hereby amends Paragraph VII of the original findings of fact of the above entitled court made herein, which said Paragraph VII as hereby amended, shall from this date read as follows, to-wit:

VII.

That said Paradise Irrigation District is a district located on the Westerly slope and foothills of the Sierra Nevada Mountains in the County of Butte, State of California, and embraces 11,250 acres, of which 30 acres consists of a State Park, and not assessed, and 381 acres are embraced in railroad rights of way and roads. That at present, and for a period of many years last past the average family within *within* the District consists and has consisted of four members and the average monthly income of such a family was and is \$100.00; that the average family within the District expends the following money monthly: \$50.00 for groceries, \$5.00 for fuel and lights, \$20.00 for clothing, \$5.00 doctor and dentist charges, \$15.00 auto expense, leaving \$5.00 for miscellaneous matters, including the payment of State and County and District taxes; that

auto expense of those living within the District is a necessary item of expense, for it is the only means of transportation that those residing within the District have. That the District has shown a gradual decline in the number of mercantile houses doing business within the District; that the population of the District in later years has decreased to the extent that the School Board, which provides school buses for the transportation of students to [14] and from the high school, within the past year has discontinued the use of one high school bus.

That the District was organized in the year 1916; that its water system consists of a storage dam, and the water is served to the parcels of land through the means of pipes; until the replacing of a portion of these pipes lately, all were wooden stave pipes; that from about 1923 on, the water system of the District has become worse and worse so it is necessary to replace it; that a loan was sought of the Reconstruction Finance Corporation of \$140,000.00 to be represented by bonds with which to replace the said water system exclusive of the dam; said bonds were issued; all, however, have not been delivered. That although the loan has been granted, less than fifty per cent of the pipe lines have been replaced and that there is no prospect of replacing the balance for some time for the material cannot be secured under war time regulations and the District had counted on W. P. A. labor which has been discontinued; that if the portion of the pipe line so replaced had not been replaced, no water could have been delivered

through such portions of the District pipe lines after three years time; that there are no wells in the District excepting a few for domestic use, but these are fed by leakage of the District's pipe-lines and are shallow and pump out speedily; also, that if such portion of the District's pipe line as has been replaced had not been replaced, there would be no means of the District with which to meet the composition figure offered the respondent, and to repay the Reconstruction Finance Corporation for the money it expended to purchase the remaining original outstanding bonds of the District; that the labor cost of replacement ran about fifty per cent of the cost, that the maintenance cost is increasing as to the portion of pipe line not replaced; that the District will be able to cope [15] with this for a while, but there will be a time soon when the portion of the pipe line not replaced will be beyond repair unless it is replaced. That before the replacement of a portion of said pipe line there was approximately 67 per cent leakage in the pipe line; this was proportionately reduced by the replacement; that the reservoir of the District leaked from the time it was constructed; that at present it leaks one-third of its capacity or approximately 1000 acre feet per year, it having a capacity of 3000 acre feet; that if the District is to continue in business, within a comparatively short time a new dam must be built, that is a new base placed in front of the old base, and the dam raised.

That as far back as 1925 the respondent Mason expressed doubts and had concern as to the future

of the District; that in repairing the defective pipe lines, either the repairs were made to breaks in the line itself or to the collars by which the different joints of the pipe line were joined together; a complete monthly itemization of these different repairs is found in petitioner's Exhibit "C", which is incorporated in these findings, and made a part hereof.

That the composition was originally initiated in 1934, and from July, 1934, on, the District has levied assessments only for the interest upon the composition figure, instead of upon the full amount of the outstanding bonded indebtedness; that in 1933 and 1934 the delinquencies in the payment of the District assessments each year were in excess of \$13,000; since the reduction in levy for interest as stated above, the greatest delinquency was slightly over \$3,000, all of which appears in petitioner's Exhibit "D", which is incorporated herein, and made a part hereof.

That although the District has levied for only interest on the composition figure since 1934, and then only at the [16] rate of four per cent instead of the six per cent called for by the original bond issues, the general fund showed a deficit as of July 31, 1942, in the sum of \$3,930.44, which is disclosed by petitioner's Exhibit "E", which is incorporated in these findings and made a part hereof.

That as stated hereinbefore in these findings, the District secured a commitment for money from the Reconstruction Finance Corporation for the re-

placement of its pipe lines; of this amount, however, only \$58,000.00 was advanced, and as hereinbefore stated, the work was stopped by reason of the inability of the District to secure materials and also labor; the capital liabilities of the District, being the old bonds and the new bonds representing the said \$58,000.00, is as follows, to-wit:

Bonds of the first issue.....\$350,000.00

Bonds of the second issue.....126,000.00

Bonds of the third issue.....58,000.00

Total\$534,000.00

That as of 1942-43, there were tax deeded lands to the District in the number of 3,617 acres; in 1930 there were but 381 acres of such tax deeded lands to the District; that the acreage of tax deeded lands to the District commencing with the year 1930 to the year 1942-43, is set forth in petitioner's Exhibit "I", which is incorporated herein, and made a part of these findings.

That the portion of the pipe lines of the District not replaced shows increasing deterioration; that in March, 1942, upon this portion of the pipe line, the District was required to make 844 repairs to the pipe bands, whereas in March, 1943, it was required to make 1869 such repairs, showing that within a year the repairs increased by 1025.

That petitioner has levied for interest upon the com- [17] position figure bonds in the full amount that would be due thereunder from the date that the obligation thereof to the Reconstruction Fi-

nance Corporation commenced; that the total amount to July 1, 1942, which would have become due thereunder was \$51,581.32, which full amount was levied for in the District's assessments, but all that was paid under such levies to July 1, 1942, was the sum of \$40,580.33, as disclosed by the petitioner's Exhibit "F", as to the amount collected for bond interest, which said Exhibit is incorporated herein and made a part of these findings; that although a continuous levy has been made for amounts which would become due for interest and/or principal under the proposed composition bonds of the District, yet to the date of the hearing herein, the collections thereon were deficient in the sum of \$11,000.99.

That upon the assessment roll of the District there are 7,633 acres; 3,206 acres within the District are deeded to the District for delinquent assessments, of which the state has also taken title to 2,030 acres for delinquent state and county taxes. The balance of the 11,250 acres consists of 30 acres of State Park which is not assessed, and 381 acres in railroad rights of way and roads.

Within the District, at the time of the hearing herein and for some time prior thereto there were approximately 1,140 acres of land being irrigated; these acres are improved principally with apples, almonds, olives, walnuts, concord grapes, sweet corn, berries and potatoes, and all require heavy fertilization. In the year 1917, the year that the distribution system of the District was installed, there were approximately 1,000 acres irrigated; be-

tween the years 1917 and 1943 the acreage irrigated for commercial production increased 140 acres.

That there are in addition to the irrigated lands, approximately 1,930 acres which are cleared of timber and underbrush and which at some time in the past have been irrigated, but not for a period of three years or longer; only a portion of these lands could be classed as available for production in the future.

In addition to the foregoing lands, there are approximately 4,585 acres in the District covered with small timber and underbrush; the cost of clearing this land would be from \$125.00 to \$200.00 per acre. That land of far superior fertility in other sections of the state can be purchased for less than the cost of clearing these lands. That about 60 per cent of this land is suitable for homesites, and is sufficient to provide homes for an additional population of 3,000 but at present there is no indication of anything to support an additional population.

In addition to the above mentioned lands there are within the District some 3,200 acres just inside of the boundaries of the District; these are covered with timber and brush, and have no value other than for scenery, and a possibility in the far distant future for timber; these lands have no agricultural value and the value for suitable homesites is obstructed by the expensive cost of extending the water lines; these lands occupy steep rocky canyon walls and deep ravines where the lava cap

has been exposed by erosion, leaving large rough rocks and very little soil on the surface, and are covered by a heavy growth of small timber and underbrush.

That in the year 1941 there was an excess in monies received from products grown within the District over expenditures in producing such products in the sum of \$6,797.02; that, however, in the year 1942, there was a deficit of \$32,821.38 in what producers received from their products [19] grown in the District over the amount for which they sold.

That there are approximately 962 homes in the District; that of these, 32 homes, or $3 \frac{1}{3}$ per cent have a construction value of \$2,600.00 or more; $96 \frac{2}{3}$ per cent of the homes in Paradise are below the standard required by the Federal government in its Federal Housing Administration in the Slum Clearance Plan. That approximately 55 per cent of the homes within the District were constructed at a cost of from \$100.00 to \$600.00. That out of approximately 50 farmers producing commercial crops within the District, only five attempt to make their living solely from their farm operations.

That transportation facilities to and from the District are poor. That a branch of the Southern Pacific Railroad from Chico to Sterling City and which traversed the District has been discontinued, and products transported to outside markets is done so by truck; that there is a railroad through the District, but only a logging railroad; that there has been no passenger or freight service for several years; that since the entry of the United States

into the war, the transportation problem within the District has become serious, and will continue for an indefinite period; that since December 7, 1941, there has been a gradual movement of workers from the District to a place of residence close to their employment. That 235 consumers of gas and electric service within Paradise Irrigation District have discontinued such service since December 7, 1941.

That the future of the District, from the evidence presented to this court, appears not in its development as an agricultural community, but in its development as a community of small holdings for homesites for people of very modest means who make their living by employment outside of the district; that the elevation is too low and the summer [20] temperatures too high for making desirable summer homes for people of means; that the necessary taxation of people of means in the future to meet Federal obligations will limit the number who will be able to support summer homes in addition to permanent homes.

That the rate of assessment which would be required for the year 1942-43, if the plan of composition did not become effected, and if such assessment was levied by the District solely for the original bond service requirements as in respect to the original bond issues, the maintenance and operation expenditure to be provided by water tolls, would be the sum of \$91.06 on each \$100.00 of valuation spread over each acre on the assessment roll, which would average \$38.06 per acre; the assessment

levied for the year 1943 was levied merely for the amounts required under the composition bonds, and under such levy the assessments were \$3.75 on each \$100.00 valuation.

That if it had not been for the Reconstruction Finance Corporation offering to and actually providing the money for the District to effect its composition offer, the District would have continued on with its delinquencies increasing year by year, and by reason of the assessments pyramiding thereby, a time would have come when the income of the District would not have been sufficient to continue the distribution of water, and the District would have been without any funds whatsoever to be used for any purpose.

That in preparation of this hearing the District employed Mr. H. E. Vogel to make a survey of the affairs of the District and report to the Board of Directors. That Mr. H. E. Vogel was a farmer practically all his life; he was in the banking business for many years and was a Director of an irrigation district for over twelve years and as such had [21] experience in the organizing of such district and remained with it until all of the District's bonds were paid in full.

Also he has owned bonds in districts; he was a former member of the California District Securities Commission; he was appointed a member in August, 1931, and continued as a member of the Commission until November, 1940; that from 1934 to 1940 he made investigation of irrigation districts

which applied to and were operating under Section 11 of the Securities Commission Act, as well as other districts, principally those which were having financial difficulties.

Each of those years his investigations took him to districts all over the State of California, usually from 14 to 18 districts a year which were operating under the moratorium act. For each of the districts he investigated he made a report to the Commission listing the facts as called for in the law, and upon which the Commission could base judgment as to the approval or disapproval of the assessment levied by the district directors for the ensuing year in pursuance of the act.

The testimony of the said H. E. Vogel was admitted as that of an expert witness; he personally came to the District and spent some thirty-four days within the District collecting his data upon which to make his report to the District. The report of said H. E. Vogel was admitted in evidence as petitioner's Exhibit "L", which said report is adopted by this Court as a part of these findings and is incorporated herein and is made a part hereof.

That said plan of composition complies with the provisions of the National Banking Act of the United States and all of the provisions of Public No. 302, enacted by the 75th Congress, approved August 16, 1937. That before the filing of the petition herein, said plan of composition was accepted [22] and approved in writing by and on be-

half of creditors of petitioner owning more than 51 per cent in amount of the securities effected by said plan, excluding however any such securities owned, held, or controlled by the petitioner; that at the time of filing of the petition herein, said plan of composition had been accepted and approved in writing by or on behalf of the owner of more than 92 per cent of the aggregate amount of securities or claims of all classes effected by such plan, excluding however, any securities or claims owned, held, or controlled by the petitioner; that of the \$476,000.00 of indebtedness evidenced by such outstanding bonds of the District, the owner of \$447,000.00 of such securities consented to said plan, and the owners of \$29,000.00 did not consent; that the bonds last mentioned, the owners of which did not consent to said composition plan, are as follows, to-wit:

First Issue, bond numbers

93,

94,

95,

96,

97,

170,

171,

257,

258,

293,

Second Issue, bond numbers

23,	35,	47,
24,	36,	81,
25,	46,	82, [23]
94,	98,	109,
95,	106,	110.
96,	107,	
97,	108,	

That said plan of composition at the time of the filing of the petition herein and now has been accepted in writing by or on behalf of such class of creditors holding more than 2/3 of the aggregate amount of claims of all classes effected by said plan, and which have been admitted by the petitioner or allowed by the Judge of this court, but excluding claims owned, held, or controlled by the petitioner; that in all respects said plan has been accepted and approved as required by the provisions of Section 83 of Chapter 10 of Public 302, enacted by the 75th Congress and approved August 16, 1937; that all amounts to be paid by the petitioner for services or expenses incidental to the composition have been fully disclosed and are reasonable; that the offer of said plan and its acceptance, as aforesaid, are in good faith; and that the petitioner is authorized by law to take all action necessary to be taken by it to carry out the plan.

That there is hereby added to the original findings of fact heretofore made and entered in the above entitled matter an additional finding which is hereby determined to read as follows, the new finding being Finding No. XII:

XII.

That the District paid to J. R. Mason, respondent, interest on his bonds in December 1936 and January 1937 totaling \$3035.95, whereupon the said J. R. Mason surrendered interest coupons representing the amount paid, which coupons were originally attached to the bonds held by him or his predecessor in interest. [24]

That the Court further finds that the plan of composition herein does not provide for any deduction to be made from the amount payable to any bondholder thereunder on account of interest coupons which may be missing from any bond by reason of the fact that they have been paid by the District and that no deduction shall be made from the amount to be paid to the bondholder J. R. Mason by reason of the payment of said sum of \$3035.95, or by reason of the fact that the coupons which he surrendered to the District as aforesaid are no longer in his possession inasmuch as said coupons are not missing coupons within the meaning of the plan of composition.

CONCLUSIONS OF LAW

The Court hereby amends Paragraph I, of the original Conclusions of Law of this Court to read as follows:

I.

That the plan of composition of the bonded indebtedness of Paradise Irrigation District of Butte County, California, should be approved and confirmed; that the payments to be made in said plan of composition are the full amount which petitioner

is able to pay on its said bonded indebtedness under the circumstances; that said plan of composition as proposed and offered by petitioner is fair, equitable and for the best interest of its creditors and does not discriminate unfairly against any creditor or creditors.

Done in open Court this 24th day of November, 1943.

MARTIN I. WELSH

Judge of the United States District Court, Northern District of the State of California.

• [Endorsed]: Filed Nov. 24, 1943, C. W. Calbreath, Clerk. [25].

In the District Court of the United States for the
Northern District of California,
Northern Division
Federal Court No. 7703

In the Matter of
PARADISE IRRIGATION DISTRICT.

**AMENDMENT TO INTERLOCUTORY
DECREE**

The Interlocutory Decree heretofore entered in the above entitled matter and filed February 3, 1941, is hereby amended by the addition of the following paragraph:

5a. That the true intent and meaning of the plan of composition is that it does not provide for

any deduction to be made from the amount payable to any bondholder thereunder on account of interest coupons which may be missing from any bond by reason of the fact that they have been paid by the District and that no deduction be made from the amount payable to J. R. Mason upon presentation of his bonds and coupons by reason or on account of the payment to him in December 1936 and January 1937 of the sum of \$3035.95, or because the interest coupons which he surrendered when said payment was made are no longer in his possession, these coupons not [26] being missing coupons within the meaning of the plan of composition.

Dated: November 24th, 1943.

MARTIN I. WELSH

Judge of the United States District Court, Northern District of the State of California.

[Endorsed]: Filed Nov. 24, 1943. C. W. Calbreath, Clerk. [27]

[Title of District Court and Cause.]

PRAECIPE FOR SUPPLYING RECORD
TO CIRCUIT COURT

To C. W. Calbreath, Clerk of the Above Entitled Court:

The undersigned, being respectively counsel for petitioner and appellee and for respondent and appellant, hereby request that the original reporter's transcript on the rehearing in the above mat-

ter together with the originals of the Exhibits herein set forth to be sent up, be sent up in lieu of copies, and that the original reporter's transcript be diminished as requested in Subdivision 1 hereunder, all for filing in the Circuit Court of Appeals after rehearing in the above Court upon the matters for which said cause was remanded to said Court by the Circuit Court of Appeals, to-wit:

1. Reporter's transcript, excepting, however, that portion of the testimony of the witness H. E. Vogel wherein he read from the report made by him to the District which is in evidence as Exhibit "L", but particularly including witness's qualifications and work done in preparation of Exhibit "L". [28]

2. Findings of Fact and Conclusions of Law on Rehearing filed November 24, 1943.

3. Amendment to Interlocutory Decree filed November 24, 1943.

4. Minute order June 17, 1943.

5. Minute order March 24, 1943.

6. Minute order October 13 and 14, 1942 (hearing, oral stipulation and order).

7. Amendment to answer filed April 9, 1943.

8. Objection to Motion to Set Aside Oral Stipulation, filed January 30, 1943.

9. Notice of Motion to Set Aside Oral Stipulation.

10. Order filed May 19, 1942.

11. Petitioner's Exhibits A to N inclusive; Respondent's Exhibits A1, A2, and A3.

12. Praecipe.

Dated: January 24, 1944.

H. S. CLEWETT

JEROME D. PETERS

Attorneys for Petitioner and
Appellee

W. COBURN COOK

Attorney for Respondent and
Appellant

It Is So Ordered:

Dated: June 30, 1944.

MARTIN I. WELSH

Judge U. S. District Court.

[Endorsed]: Filed June 30, 1944, C. W. Calbreath, Clerk. [29]

**CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT ON RE-HEARING**

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 29 pages, numbered from 1 to 29, inclusive, contain a full, true and correct transcript of certain records and proceedings in the Matter of Paradise Irrigation District, No. 7703, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the Praeceptum for Supplying Record to Circuit Court, copy of which is embodied herein.

I further certify that the cost of preparing and

certifying the foregoing Record is the sum of Twelve and 05/100 (\$12.05) Dollars, and that the same has been paid to me by the attorney for the appellant herein.

In Witness whereof, I have hereunto set my hand and the official seal of said District Court, this 13th day of July, A.D. 1944.

[Seal]

C. W. CALBREATH

Clerk

By F. M. LAMPERT

Deputy Clerk [30]

In the District Court of the United States for the
Northern District of California, Northern
Division

No. 7703

In the Matter of

PARADISE IRRIGATION DISTRICT.

REPORTER'S TRANSCRIPT

Tuesday, April 20, 1943

Wednesday, April 21, 1943

APPEARANCES:

For the Petitioner Paradise Irrigation District:

JEROME D. PETERS, Esq.

and

H. S. CLEWETT, Esq.

For the Respondent J. R. Mason:

W. COBURN COOK, Esq.

Before: Hon. Martin I. Welsh, Judge.

Tuesday, April 20, 1943

10:00 A.M.

The Clerk: In re Paradise Irrigation District.

Mr. Peters: Ready.

Mr. Cook: Ready, your Honor.

Mr. Peters: If the Court please, prior to the
introduction of evidence I think for clarity's sake a
short outline should be given so we may know defi-

nately the issues to be tried herē. As your Honor is aware, this case was tried in 1939 before the late Judge Louderback; findings made and a judgment interlocutory in effect entered, from which an appeal was taken by the respondent J. R. Mason.

The matter was argued before the Circuit Court of Appeals and was remanded back here for findings upon one issue only, namely, the present maximum ability of the District to pay. Also it was remanded back for a clarification of what the Court meant in its interlocutory judgment by the words "unpaid coupons."

Now we are prepared at this time to prove the maximum ability of the petitioner to pay.

Through the mail there arrived yesterday an answer or an amendment to the answer of the respondent in which, in effect and substantially, he urges that the composition is not fair and equitable because Mr. Mason, the respondent, is refused composition bonds in lieu of his old bonds and is required to accept cash.

Now the reason I said at the outset that it is well to clarify our position here is this: I shall and do move that the answer be stricken from the record. The ground of my motion is this: that this case is now on appeal. The appeal has not been decided. We are here today only to take evidence for the purpose of amending one finding in the many findings of fact of the trial court. Therefore the amendment is not proper and could not be proper because the judgment has been appealed.

from and he cannot amend a pleading upon an appeal before a circuit court.

The Court: Let me ask, who represents the other side?

Mr. Peters: Mr. Coburn Cook, your Honor.

Furthermore, this answer goes to the fairness of the plan. The entire fairness of the plan was not sent back to this Court. The only portion of the fairness of this plan that was sent back to this Court for further findings on is the one issue, namely, the present maximum ability of the District to pay. All the rest of the fairness of the plan is under consideration before the Circuit Court, and therefore if this amendment is allowed the Court will be taking evidence upon an issue upon which the case was not remanded here for further findings.

As a secondary measure, I have always assumed that where a case is at issue, even in the lower court—I mean even in the trial court, that before an amendment can be made it must be made on notice to opposing counsel and leave of Court obtained to make the amendment.

Now, as I say, I received this yesterday afternoon when I returned to my office. And at this time I move that it be stricken from the files because it will only complicate the hearing, as this matter is not before the Court at this time.

Mr. Cook: Now, if your Honor please, I had desired to make a motion myself, and I suppose I may as well reply to counsel and make my motion at the same time, because it really somewhat pertains to the same point.

This case, as was said, was tried by Judge Louderback and went to the Circuit Court of Appeals. It is a municipal bankruptcy case involving this irrigation district in which their plan offers 52 cents—five hundred twenty some dollars for a thousand dollar bond, and Judge Louderback decided that the plan was fair and overruled all our objections, and the case went to the Circuit Court of Appeals where the Court had already heard the District Irrigation case and remanded that case to the District Court and has written an opinion and had disposed of all the points except the fairness of the plan and the ability of the District to pay. When this case came up for argument before the Circuit Court of Appeals the Court did not hear argument and remanded this case back to the trial court for the clarification of the findings on the fairness of the plan and also for determination as to whether or not the plan should be interpreted to provide—well, the specific facts were that Mr. Mason between the first bankruptcy act and the second bankruptcy act had some actions pending against the District and they had voluntarily paid him about \$3000.00 on his interest coupons, so the question came up as to whether or not the plan required that there should be a deduction of the amount to be paid him because of this payment on the coupons, the plan using the words “that missing on paid coupons”—perhaps I haven’t got the exact language, but that was the sense of it, as to whether or not the plan meant that there should be deduction for coupons that were missing when they had actually been paid and therefore they weren’t missing.

at all, they were merely on paid coupons that should be missing, the thought being that if a bondholder turns in a bond and doesn't have a certain amount of coupons and someone else has them or they are mislaid or something like that and then afterwards they turn up, whoever holds those coupons would be entitled to consideration for the coupons. In this case the coupons are not on paid missing coupons, they were actually paid, the District has them, and therefore they could never show up in anybody's hands.

So the question was as to whether or not the plan required that there should be a deduction of the amount to be paid in because of this payment.

That was the same point that was raised in the Vista Irrigation case which your Honor will recall we had a hearing on here.

(Argument in opposition to motion to strike amended answer from files.)

That is the answer to Counsel's motion that we strike this answer.

And in connection with that matter I wish to make a motion now, which is this: I move that the plan be amended to provide that both Mr. Mason and the R.F.C. be permitted to take refunding bonds in exchange for their old bonds, and I wish to state this: that if the plan is so amended to allow Mr. Mason to take refunding bonds with the same amount of interest as the R.F.C. is entitled to—and in that connection, they have been receiving interest at 4 per cent. on their claim, which will be the

amount of the refunding bonds, from approximately January first, I think it is, 1934; and therefore I move that the plan be amended to allow both creditors to have these refunding bonds with interest on the refunding bonds from that time. And if the plan is so amended, Mr. Mason will accept the composition. If the Court should grant this motion now for the amendment of the plan there would be no necessity to take further evidence. Mr. Mason would accept this plan of composition.

(Argument by respective counsel on the motion to amend plan of composition and the motion to strike answer from the files.)

The Court: Both motions submitted?

Mr. Peters: Yes, your Honor.

Mr. Cook: Yes, your Honor.

The Court: Let both motions be submitted on briefs.

[Endorsed]: Filed Jan. 26, 1944.

[Endorsed]: No. 9925. United States Circuit Court of Appeals for the Ninth Circuit. J. R. Mason, Appellant, vs. Paradise Irrigation District, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division.

Filed July 17, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit

United States Circuit Court of Appeals
for the Ninth Circuit

No. 9925

J. R. MASON,

Appellant,

v.

PARADISE IRRIGATION DISTRICT,

Appellee.

DESIGNATION OF SUPPLEMENTAL
TRANSCRIPT OF RECORD

The appellant designates as those parts of the record to be printed as a supplemental transcript of record after the hearing in the District Court upon the remand of this cause, the following:

1. The entire supplemental record upon the hearing in the District Court upon the remand of the cause and which has been filed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, except

(a) The exhibits

(b) The reporter's transcript, except that there is designated for printing pages 1, 3, 4, 5, 6 and lines 1 to 25 on page 7 of said reporter's transcript.

Dated: September 6, 1944:

W. COBURN COOK

Attorney for Appellant

[Endorsed]: Filed Sept. 8, 1944. Paul P.
O'Brien, Clerk.

No. 9925

IN THE
**United States Circuit Court of Appeals
For the Ninth Circuit**

J. R. MASON,

Appellant,

vs.

PARADISE IRRIGATION DISTRICT,

Appellee:

**Upon Appeal from the District Court of the United States
for the Northern District of California,
Northern Division**

**PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT**

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpts from Proceedings of Monday, March 26,
1945.

Before: Garrecht, Mathews and Healy,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Pursuant to request of counsel for respective parties, Ordered appeal herein submitted on briefs on file to Garrecht, Mathews and Stephens, Circuit Judges, for consideration and decision.

United States Circuit Court of Appeals
of the Ninth Circuit

Excerpts from Proceedings of Friday, May 11,
1945.

Before: Garrecht, Mathews and Stephens,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION
AND FILING AND RECORDING OF
DECREE

By direction of the Court, Ordered that the type-written opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that

a decree be filed and recorded in the minutes of this Court in accordance with the opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

OPINION

Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division

Before: Garrecht, Mathews and Stephens,
Circuit Judges.

Stephens, Circuit Judge.

This appeal is by a bondholder from an interlocutory decree approving a reorganization plan of a California irrigation district organized under the California Irrigation District Act of 1897 (Cal. Stat. 1897, p. 254).

But two points are presented.

Firstly, it is contended that the bondholder has not been treated fairly or equally in the reorganization plan inasmuch as other creditors may be awarded 4% refunding bonds while he must take cash for the bonds he is required to surrender. Appellant admits that this court has held contrary to contention in *West Coast Life Ins. Co. v. Merced Irr. Dist.*, 114 Fed. 2d 654 (C.C.A. 9, 1940), and *Lorber v. Vista Irr. Dist.*, 127 Fed. 2d 628, 143 Fed. 2d 282 (C.C.A. 9, 1944). The contends that the Fifth Circuit has decided otherwise in *State of Texas v.*

Tobasco Consolidated School Dist., 132 Fed. 2d 62, 133 Fed. 2d 196, 142 Fed. 2d 58 (C.C.A. 5, 1944). We adhere to our viewpoint as expressed in this court's decisions as cited.

Secondly, it is submitted that the trial court erred in granting a motion by appellee to set aside a stipulation theretofore made by the parties and accepted by the court. The only part of the stipulation in issue is that part which provided that appellant should be awarded \$1000 costs and expenses on the appeal. Stipulations of this nature are subject to the discretion of the trial court and can be attacked only upon the showing that such discretion was abused and that the court's ruling is inequitable. No inequitable circumstance is asserted by appellant.

Affirmed.

[Endorsed]: Opinion. Filed May 11, 1945. Paul O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 9925

J. R. MASON,

Appellant,

vs.

PARADISE IRRIGATION DISTRICT,

Appellee.

DECREE

Appeal from the District Court of the United States for the Northern District of California, Northern Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Northern District of California, Northern Division, and was duly submitted:

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the the decree of the said District Court in this cause be, and hereby is, affirmed with costs in favor of the appellee and against the appellant.

It Is Further Ordered, Adjudged, and Decreed by this Court, that the appellee recover against the appellant for its costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered May 11, 1945.
Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

**CERTIFICATE OF CLERK, U. S. CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT, TO RECORD CERTIFIED UN-
DER RULE 38 OF THE REVISED RULES
OF THE SUPREME COURT OF THE
UNITED STATES**

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two hundred seventeen (217) pages, numbered from and including 1 to and including 217, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of appellant in propria persona, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 11th day of July, 1945.

[Seal]

PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 8, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted, limited to the question whether any applicable rule requiring equality of treatment among creditors was violated by the difference between the treatment accorded the petitioner and that accorded the Reconstruction Finance Corporation under the approved plan. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson and Mr. Justice Burton took no part in the consideration or decision of this application.

(1185)

INDEX

	Pages.
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes and constitutional provisions involved	2
Specification of errors to be urged	3
Statement	3
Reasons for granting the writ	4
Conclusion	21

CITATIONS

Cases:

<i>American United Mutual Life Ins. Co. v. Avon Park</i> , 311 U. S. 138	7
<i>Anderson Cottonwood v. Klukkert</i> , 13 Cal. (2d) 191	10, 14
<i>Anderson Cottonwood v. Zinzer</i> , 51 Cal. App. (2d) 582	10
<i>Ashton v. Cameron Co.</i> , 298 U. S. 513	11, 20
<i>Ballard v. Hunter</i> , 204 U. S. 241	13
<i>Bardon Land & River Imp. Co.</i> , 157 U. S. 327	13
<i>Brush v. Commissioner</i> , 300 U. S. 352	4
<i>Cargile v. N. Y. Trust Co.</i> , 67 Fed. (2d) 585	11
<i>Davis v. Gray</i> , 83 U. S. 203, 21 L. ed. 457	13
<i>El Camino v. El Camino</i> , 12 Cal. (2d) 378	10
<i>Ex parte Ayers</i> , 123 U. S. 443	11
<i>Fallbrook I. D. v. Bradley</i> , 164 U. S. 112	4, 15
<i>Fallbrook v. Cowan</i> , 131 F. (2d) 513	14
<i>Guaranty Trust Co. v. York</i> , No. 264 (1944)	12
<i>Huddleston v. Dwyer</i> , 322 U. S. 232	13
<i>Kaufman Co. Kevec Imp. Dist. v. Mitchell</i> , 116 Fed. (2d) 959	7
<i>Keefe v. Clark, Oakland Co. Drain Comm.</i> , 322 U. S. 393	10
<i>Lewis v. Monson</i> , 151 U. S. 545	13
<i>Metropolitan Water District v. Riverside County</i> , 21 Cal. (2d) 640	10
<i>Moody v. Provident</i> , 12 Cal. (2d) 389	10, 16

Cases—Continued.

	Pages
<i>Pollock v. Farmers L. & T. Co.</i> , 158 U. S. 602.....	9
<i>Provident v. Zumwalt</i> , 12 Cal. (2d) 365.....	10, 14
<i>Selby v. Oakdale</i> , 140 Cal. App. 471.....	10
<i>Shouse v. Quinley</i> , 3 Cal. (2d) 357.....	10
<i>State of Texas v. Tabasco Cons. School Dist.</i> , 132 Fed. (2d) 62, 133 Fed. (2d) 196, 142 Fed. (2d) 58.....	2, 6
<i>U. S. v. Beking</i> , 304 U. S. 27.....	6, 11
<i>Wood v. Lovett</i> , 313 U. S. 362.....	13

Statutes and Constitution:

Bankruptcy Act, Chapter IX.....	5, 7, 15
California Irrigation District Act, Stats. 1897, p. 254..	2
Emergency Farm Mortgage Act of 1933, Section 36, part 4 (Public No. 78, 73rd Congress, approved June 16, 1933).....	5
Judicial Code, Section 240(a) (28 U.S.C., Sec. 347(a))	2
Stats. 1913, P. 778.....	2, 15
11 USCA 301-304 (48 St. 798).....	2, 11, 20
11 USCA 401-403 (52 St. 940) and (50 St. 654).....	2, 3, 6, 11

Miscellaneous:

30 Ops. 252.....	4
38 Ops. 563.....	4
"Principles of Political Economy", Book V, Ch. III, Section 1, by John Stuart Mill.....	15
"Principles of Economics", p. 540, by Taussig (3rd Rev. ed.).....	15
The Federalist XXXII, XXXIII, by Alexander Hamilton.....	18
The Federalist Essay XXXIII, by Alexander Hamilton	17
"Wealth of Nations", Book V, Ch. 2, part, 2, by Adam Smith.....	15

In the Supreme Court of the United States

OCTOBER TERM, 1945

No.

J. R. MASON, PETITIONER

v.

PARADISE IRRIGATION DISTRICT, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

J. R. Mason prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Ninth Circuit, entered in the above case on May 11, 1945, affirming the decision of the United States District Court.

OPINIONS BELOW.

The opinion in the District Court (R. 44, 185, 200).
The opinion in the Circuit Court of Appeals (R. 215) is not yet reported.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on May 11, 1945 (R. 215). The jurisdiction of

this Court is invoked under Section 240(a) of the Judicial Code (28 U.S.C., Sec. 347(a)).

QUESTIONS PRESENTED.

1. Whether the judgment below is inconsistent with the rule of equality among creditors invoked by the Circuit Court of Appeals for the Fifth Circuit in *State of Texas v. Tabasco Cons. School Dist.*, 132 Fed. (2d) 62, 133 Fed. (2d) 196, 142 Fed. (2d) 58.

2. Whether the judgment contravenes the well settled rule that State law and decisions govern the substantive and procedural rights of holders of the bonds of a State, or its political subdivision, issued under authority of the power of the sovereign State to borrow money, and that such power, when exercised is immune, with or without State consent, from the will of Congress; or its Courts.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

The statutes involved are California Stats. 1897, p. 254 as amended, being the California Irrigation District Act; Stats. 1913, p. 778, the Districts Securities Commission Act; 11 USCA 301-304 (48 St. 798); 11 USCA 401-403 (52 St. 940) and (50 St. 654) adding Sections 81 to 83 to the Bankruptcy Act of 1898.

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred:

1. In denying petitioner the privilege of receiving the same refunding 4% bonds, with accrued interest, as given the only other creditor at bar, the R.F.C., and ordering petitioner to accept \$525.21 cash for each \$1000 par value 6% gold bond.

2. In sustaining the decree of the District Court which unlawfully deprives petitioner of substantive and procedural vested rights governed by State law and decisions, in contravention of State law, the source of the substantive rights and duties of the parties.

STATEMENT.

This case involves the substantive and procedural rights of J. R. Mason, petitioner, as owner and holder of valid, binding and unpaid general obligation bonds of respondent, a political subdivision of the State of California, whose fiscal powers and duties are ruled by State law and decisions, and the force and effect of the interlocutory decree of the District Court, as it deprives petitioner of vested rights, in a proceeding by respondent under the provisions of 11 USCA 401-403.

The facts relating to the nature and activities of agencies of the State of California ruled by the same law as respondent were construed by this Court in

Fallbrook I. D. v. Bradley, 164 U. S. 112, and as pointed out in *Brush v. Commissioner*, 300 U. S. 352, at 366-369. Also by the Attorney General of the United States in 30 Ops. 252, January 30, 1914, and 38 Ops. 563, February 1, 1937.

REASONS FOR GRANTING THE WRIT.

I.

Petitioner moved to amend the judgment (R. 181) to have it provide that petitioner should get the same treatment as the only other creditor in the case, i.e., Reconstruction Finance Corporation, upon whose consent, as bondholder the case would stand or fall. The plan of composition, as it stands is neither fair nor equitable, because it permits the R.F.C. to get refunding bonds carrying 4% interest, together with full 4% on the funds advanced to respondent in 1934, and denies equal treatment for petitioner, who is ordered to accept \$525.21 in cash for each \$1000 par value bond, with less than 4% interest since respondent defaulted on the bonds in 1934, depriving petitioner of the equal right to receive refunding 4% bonds, and the privilege of receiving 4% interest until they become due and are paid, on the same terms as given to the R.F.C. The proof of claim of petitioner is shown (R. 161). Terms of the agreement between R.F.C. and respondent are shown (R. 74). Similar provisions as in the instant case governed the agreement between

R.F.C. and the Tabasco Cons. School District, made under authority of Section 36, part 4, of the Emergency Farm Mortgage Act of 1933, known as Public No. 78, 73rd Congress, approved June 16, 1933. This law authorized R.F.C. to make loans to districts, when it (C)

"has been satisfied that an agreement has been entered into between the applicant and holders of its outstanding bonds or other obligations under which the applicant will be able to purchase or refund all or a major portion of such bonds * * * at a price determined by the Corporation to be reasonable * * *"

The record shows that the loan applied for by respondent was disbursed by letter dated December 17, 1934 (R. 87) from R.F.C. to the Federal Reserve Bank of San Francisco, over 93% of the old bonds having been deposited for acceptance of the cash offer of \$525.21 and it must be that R.F.C. was satisfied that 93% acceptance was the "major portion" required to enable them to disburse. The first attempt to bludgeon petitioner into accepting this same settlement, under Chapter IX, failed (R. 89) on the ground that " * * * the Court is without jurisdiction to entertain the petition. * * *". For more than a decade petitioner has resisted activities which this Court has pronounced unconstitutional, fomented by powerful economic and social forces, not alone because of his pecuniary interest in the cases, but because he is a believer in the

soundness of the basic principle of constitutional law, i.e., the doctrine of reciprocal immunity, steadfastly adhered to by this Court, and not modified or repudiated by anything said in the *U. S. v. Bekins* (304 U. S. 27) case.

Petitioner's willingness to adjust his claims is shown in the letters (R. 128-132) but he opposed efforts to bludgeon him into surrendering his bonds by methods he believed unconstitutional, and was sustained (R. 89). Undaunted, the same economic forces set out to purge petitioner again, under the identical facts, so that it is evident that they were unwilling to accept this Court's judgment as final or in any way binding upon them.

The offer by petitioner to accept the same 4% bonds on the same terms as the R.F.C. (R. 181-209) was refused, and this refusal raises a clear conflict with the rule adopted by the Fifth Circuit Court of Appeals in the *Tabasco* case, *supra* (133 Fed. (2d) 196, 142 Fed. (2d) 58), in which case the Court overruled protests and objections advanced by the R.F.C. to the equality treatment requested by the State of Texas, which held the only bonds involved in that proceeding not controlled by the R.F.C. The facts are parallel as regards the relative claims of petitioner and the R.F.C. in the instant case, and the judgment below discriminates in favor of the R.F.C., and it therefore is fatally defective under the limitations of 11 USCA 403.

In *Kaufman Co. Levee Imp. Dist. v. Mitchell*, 116 Fed. (2d) 959, the Circuit Court for the Northern District of Texas, in refusing to approve a plan of composition under Chapter IX, used this language:

“(1,2) * * *. It is a fundamental principle of the bankruptcy law that there shall be equality among creditors of the same class and that the holders of residuary interests, such as stockholders and others similarly situated, shall not participate to the prejudice of creditors. * * *”

In *American United Mutual Life Ins. Co. v. Avon Park*, 311 U. S. 138, this Court, in reversing the judgment, used this language:

“The fact that the vast majority of security holders may have approved a plan is not the test of whether that plan satisfies the statutory standard. The former is not a substitute for the latter. They are independent. (Citations.)”

The other original bondholders in the instant case, took cash for their bonds in 1934 (R. 87), and never consented to the instant proceeding, which was not begun until November 4, 1937 (R. 5).

Petitioner submits that the instant case is not in any respect analogous to or comparable with a situation where a debtor can borrow money from an outside person, who, at the time the offer was made, placed in escrow the money with which to take up the bonds if the plan is approved. In the case at bar, the R.F.C.

is obligated to take refunding 4% bonds as provided in the plan, regardless of the outcome of this proceeding.

It is submitted that in view of the fact that the R.F.C. had already paid out its money, and contracted to take the refunding bonds several years before the District filed its plan of composition, November 4, 1937, the R.F.C. is in a different position from petitioner, because he is not under obligation to accept either \$525 cash for his old bonds, or to take refunding bonds for his investment, as the R.F.C. had contracted to do. The R.F.C. is not entitled in law or in equity to enjoy such an advantage, as the Court below sanctioned, to the prejudice of petitioner, the only holder of original unpledged bonds.

If it is assumed that the contract between R.F.C. and the District, executed in 1934 (R. 74), does not obligate the R.F.C. to take refunding bonds equal in par value to the money loaned, but left R.F.C. as a creditor on an equal footing with petitioner, and the R.F.C. is permitted to get 4% thirty year bonds on a 52% basis for each original bond it holds, then, by the same token, petitioner should have been permitted to get similar new bonds for his proportion of said original indebtedness. In the trial Court, petitioner offered to accept his pro rata in new bonds, in lieu of the 52-cents in cash. The trial Court, without any reason given therefor, refused this offer made by petitioner, but permitted the R.F.C. to get 100% upon its

investment, with full 4% interest, and also to get refunding 4% thirty year bonds.

Whether it would have been best to require petitioner to take cash is not a question that should concern the trial Court. Since petitioner offered to accept the new bonds on the same terms as the other creditor, the R.F.C., the Court should not have denied him that privilege, and at the same time give R.F.C. that privilege.

II.

That respondent is the *alter ego* of the State, and that the bonds at bar are contracts, not between individuals, but between the State and petitioner, and therefore immune from federal control or interference, whether the federal statute stems from the taxing clause or the bankruptcy clause, is the contention of petitioner.

If a federal statute or court may treat the substantive and procedural rights of holders of the bonds here involved as the property of some other person than the one whom the bond contract has designated, the State government has thereby been interfered with and prevented from fulfilling the obligation into which its agent has entered, by a simple statute of Congress, and the result would contravene the rule of law announced in *Pollock v. Farmers L. & T. Co.*, 158 U. S. 602, 630, as follows:

"We have unanimously held in this case that so far as the law operates on the receipts from municipal bonds, it cannot be sustained, because it is a tax on the power of the states, and on their instrumentalities to borrow money, and consequently repugnant to the Constitution."

Differing fundamentally from the bonds involved in *Keefe v. Clark, Oakland Co. Drain Comm.*, 322 U. S. 393, the bonds at bar are not a "debt" in the usual sense, but statutory land-tax and rent anticipation trust certificates, which the Legislature lawfully authorized and protected by making it the duty of respondent to administer all land acquired for unpaid taxes as a beneficent landlord, exempt from State taxation, and to apply the revenues derived from the sale, lease or management of the land within its boundaries as a public trust, according to the laws at the time the bonds were issued.

Shouse v. Quinley, 3 Cal. (2d) 357;

Selby v. Oakdale, 140 Cal. App. 171;

Provident v. Zumwalt, 12 Cal. (2d) 365;

El Camino v. El Camino, 12 Cal. (2d) 378;

Moody v. Provident, 12 Cal. (2d) 389;

Anderson Cottonwood v. Klukkert, 13 Cal. (2d) 191;

Metropolitan Water District v. Riverside County, 21 Cal. (2d) 640;

Anderson Cottonwood v. Zinzer, 51 Cal. App. (2d) 582.

These judicial determinations by the highest State Court govern the powers, rights and duties of respondent and establish the bonds at bar as being in no sense analogous to special assessment bonds, because the bonds are simply an assignment of tax and rent money, and after delivery there is no future obligation, either absolute or contingent, to pay out anything except the receipts from the tax levies anticipated, when collected as taxes or rent.

These State decisions clearly and unequivocally establish respondent as merely a nominal instrumentality, and the State as the real party in interest, and this proceeding is in substance one by the State which does not lie within the jurisdiction of the Federal Courts, even though the State of California offers to consent to the federal jurisdiction (*Cargile v. N. Y. Trust Co.*, 67 Fed. (2d) 585; *Ex parte Ayers*, 123 U. S. 443). Neither State consent nor submission can enlarge the powers of Congress (*Ashton v. Cameron Co.*, 298 U. S. 513). This rule of law was not reversed in *U. S. v. Bekins*, 304 U. S. 27.

Mr. Justice Jackson in his book, "The Struggle for Judicial Supremacy", writes on page 167 that the federal law under which this proceeding arises (11 USCA 401-403), " * * * was not one extending federal power". Although State consent was required by the provisions in 11 USCA 301-304, that requirement was omitted from the amended statute, 11 USCA 401-403,

under which State consent or lack of State consent is irrelevant and immaterial.

The scope of the bankruptcy clause either reaches the fiscal affairs of a State and its political subdivisions, or it does not, and if it does, no State can oppose control or limit the exercise of this federal power over its borrowing and taxing power.

It can not be denied that the source of the substantive rights of petitioner in the bonds at bar, is the laws of California, and that those rights have been authoritatively declared by the highest State Court in the cases cited, *supra*. That these substantive rights are governed by State law and decisions, and not by federal legislation, appears to have been reaffirmed by this Court on June 19, 1945, in *Guaranty Trust Co. v. York*, No. 264, October 1944 Term, where it was said:

"To make an exception to *Erie RR v. Tompkins* on the equity side of a federal court is to reject the considerations of policy which after long travail, led to that decision * * * The source of substantive rights enforced by a federal court under diversity jurisdiction, it can not be said too often, is the law of the States. Whenever that law is authoritatively declared by a State, whether its voice be the legislature or its highest court, such law ought to govern litigation founded on that law, whether the forum of application is a State or federal court and whether the remedies be sought at law or may be had in equity."

Because State law and decisions control the rights of holders of local bonds in a proceeding brought by a bondholder in a Federal Court (*Huddleston v. Dwyer*, 322 U. S. 232), *a fortiori* reason indicates that the same law and decisions must control the rights of the parties in a proceeding brought by the local government against the bondholder, in a federal forum.

Respondent is a taxing instrumentality of the State government, and this Court has repeatedly said that, in matters of taxation, Federal Courts will follow rulings of State Courts on all questions involving the tax laws of the State (*Bardon, Land & River Imp. Co.*, 157 U. S. 327, 330; *Ballard v. Hunter*, 204 U. S. 241, 262; *Lewis v. Monson*, 151 U. S. 545, 549). Before litigation resulting in exonerating taxpayers from taxes mandatory by the State Constitution is approved, it must clearly appear that none of the fundamental guarantees contained in the Federal Constitution has been invaded (*Wood v. Lovett*, 313 U. S. 362).

“When a State becomes a party to a contract, as in the case before us, the same rules of law are applied to her as to private persons under like circumstances. *When she or her representatives are properly brought in the forum of litigation, neither she nor they can assert any right or immunity as incident to her political sovereignty.*” (Emphasis ours.)

Davis v. Gray, 83 U. S. 203 (21 L. ed. at p. 457).

The effect of the decree, if it stand, can only be to make a gift of public funds to private parties holding land, and to give them a tax-rate ceiling where none exists under State law. The full rent value of all the land within the taxable boundaries of respondent belongs to respondent ahead of any right or claim by a county, or mortgage holder, and any land title acquired from a county or the State is strictly subject to taxation by respondent to pay the bonds owned by petitioner, with interest (*Provident v. Zumwalt*, supra; *Anderson Cottonwood v. Klukkert*, supra; *Fallbrook v. Cowan*, 13K.F. (2d) 513). In other words, the effect of the decree, if it stand, will be to circumvent a ceiling on rent fixed by State law, because it will result in permitting the private appropriators of rent to pocket more rent, after the reduced taxes that respondent will levy annually on the value of privately held land, to service its reduced bond obligations. The unearned increment thus created will be capitalized into higher prices for land titles by those who have gotten exoneration from their tax paying duties, thus making it more costly for homeseekers to acquire locations in the district whether for homes, orchards, farms or stores.

Neither the general welfare nor the best interests of the soldiers and sailors now fighting abroad, will be protected by depriving petitioner of the substantive rights in his bonds.

In support of the contention that taxes payable by the private holders of land, in proportion to its rent value, can not increase living costs, but on the contrary stimulate production, see

“Wealth of Nations”, Book V, Ch. 2, part 2, by Adam Smith;

“Principles of Political Economy”, Book V, Ch. III, Sec. 1, by John Stuart Mill;

“Principles of Economics”, p. 540, by Taussig (3d Rev. ed.).

The Court may take judicial notice of the feverish activity by speculators in titles to California irrigated lands, within the districts that have cut their land taxes since the enactment of the original and amended Chapter IX of the Bankruptcy Act. The rise in land prices has equalled if not exceeded the difference between the original bonds of the district, and the composition figure, in every instance, all of which has hampered instead of helping homeseekers. Feudalism has been raised to power in California, as never before, while the holders of public bonds irrevocably certified by the State a lawful investment of all trust funds, and financial institutions (Stats. 1913, p. 778) have been subjected to a repudiation campaign promoted and carried on by land speculators and mortgage holding interests, which have never been willing to accept as settled the law creating respondent, as interpreted by this Court in *Fallbrook v. Bradley*; supra, and the

rights of bondholders, as construed in *Moody v. Provident*, supra, which the decree below contravenes.

Unless it lies within the authority of Congress, by simple statute, and with or without State consent, to abolish the powers and duties of respondent, as it admittedly could abolish such an instrumentality as the Port of New York Authority, it is wholly inaccurate to treat respondent as an instrumentality over whose fiscal affairs Congress possesses any regulatory jurisdiction, under any circumstances.

Recent decisions holding that officers and employees of a State or State instrumentality are not immune from the federal income tax laws, have carefully distinguished between the incomes from salaries, and from general obligation bonds of the political subdivisions of a State, like those at bar. The rule that because a tax on receipts from municipal bonds is equivalent to "a tax on the power of the States and their instrumentalities to borrow money, and consequently repugnant to the Constitution" (158 U. S. at 630) has not been abandoned either directly or by implication. This rule is based upon the reasoning that such a tax would compel the States and local governments to put out higher interest bearing bonds, which would result in putting up the local property tax rates, which Congress is not permitted to do, because of the regulation of apportionment. But, whether the Act of Congress would result in putting up local tax rates, or in reducing them, as in the case at bar, the rule of

constitutional law must apply with equal force, in both cases. Otherwise it is possible for Congress to abolish land taxes lawfully payable to a State, although Congress can not tax the same land.

Even Alexander Hamilton said in The Federalist Essay XXXIII:

"Suppose again, that upon the pretense of an interference with its revenues, it (Congress) should undertake to abrogate a land-tax imposed by authority of a State; would it not be equally evident that this was an invasion of that concurrent jurisdiction in respect to this species of tax, which its Constitution plainly supposes to exist in the State governments? If there ever should be a doubt on this head, the credit of it will be entirely due to those reasoners who, in the imprudent zeal of their animosity to the plan of the convention, have labored to envelop it in a cloud calculated to obscure the plainest and simplest truths."

Although the discrimination against petitioner and favoring the R.F.C. shown above, stamps the decree as unfair and inequitable, the second question presented is the basic question, because the issue is squarely raised, in an actual controversy, whether Federal or State law and decisions govern the borrowing and taxing power of a State, when exercised by the State, or by a political subdivision to which the State has confided its sovereign power to tax the value of all land within its boundaries without limitation on tax rate or number of years, to regulate its occupancy and

use, and to administer all land within its boundaries as a beneficent landlord, collecting the full rent value of all land, or as much of it as is needed to keep alive and fulfill its obligations, acting at all times as an agency of the State, all of whose property is State owned, and wholly exempt from taxation by other State agencies.

The powers, rights and duties of districts created under this State law have been settled by this Court and the highest State Courts, and there are no parties even suggesting that their rights would be unlawfully affected by a reversal of the decree below and dismissal of the proceedings.

It is submitted that our constitutional system is dependent on the faithful and proper exercise of the power delegated by the people to their states to levy and collect direct *ad valorem* land taxes, and that this power, when exercised remain independent and uncontrollable by the Congress, in the most absolute and unqualified sense, as explained in *The Federalist* XXXII, XXXIII, by Alexander Hamilton.

Whether the action by this Court will result in pecuniary loss or gain to petitioner is unimportant in comparison with the basic principle of constitutional law squarely presented, i.e., the doctrine of reciprocal immunity versus the centralization of power.

Believing that it is imperative that the States perform their delegated powers to levy and collect

direct *ad valorem* taxes, in order to lessen their pressure on Congress for grants and subventions, and also to prevent speculators in land titles from reaping unlawfully and where they have not sown, it is submitted that disapproval by this Court of the decree below would constitute a positive step to compel the States to collect a larger share of the total public funds needed, and it would stimulate incentive to put privately held land to its appropriate use, thus increasing the supply of guns and butter, and of everything else found in or on land, and also improve the opportunities for self-employment by keeping down the cost of land titles, and thus promote the general welfare.

Influential economic interests favoring bigger federal grants and subventions to States and local governments are bitterly opposed to direct *ad valorem* taxes by local governments, and are seemingly quite willing that the States should not survive as sovereign States. The doctrine of immunity was adopted by the framers of our Constitution because of their conviction that the unalienable rights of man could not survive in a single, all powerful centralized government. It stemmed from the view, which is just as fundamental today, that the survival of vigorous local self-government and its delegated functions, is indispensable for the existence of liberty, and subsequent history in many other nations, notably in the Weimar Republic of German States over which the "Neuauf-

baugesetz" or "Reconstruction Act" of January 30, 1934, gave the Reichstag supreme power in the Second Article which read, "The sovereign rights of the States are transferred to the Reich" (the same year that Congress passed 11 USCA 301-304 but ruled unconstitutional in the *Ashton* opinion) affords irrefutable proof of the imperative necessity for adhering strictly to this fundamental principle, i.e., the doctrine of reciprocal immunity, which the decree below contravenes.

Jeremiah Sullivan Black in a speech March 10, 1873, to the Pennsylvania Constitutional Convention said:

"Now, if anything is established by all human experience, it is that no rule of action, no law, no commandment will ever be observed by men who can promote their interests or gratify their passions by breaking it, unless they are deterred by the fear of retributive justice * * * This may seem like a low view of human nature, but we can not help it; we are as we are made."

Basically the question at bar is whether this fundamental and traditional principle of constitutional law shall survive in this Republic, and denial of the petition can only pave the way for the decline of local self-government, civil rights and the common good, at a time when the revival of healthy local self-government vigorously fulfilling its proper functions was never as greatly needed, including its function to regulate the private occupancy of land within its jurisdiction ac-

- cording to the laws of its creator, the State, exclusively.

The issue seems crystal clear, "obsta principiis", "resist the beginnings".

CONCLUSION.

It is submitted that a writ of certiorari should be granted, the decree of the Court below reversed and the proceedings directed to be dismissed.

Dated, San Francisco, California,

August 1, 1945.

J. R. MASON,

Petitioner in Propria Persona.

Table of Authorities Cited

Cases	Pages
Arkansas Corp. v. Thompson, 312 U. S. 673.....	10
Ashton case, 298 U. S. 513.....	9
Comm. v. Skaggs, 122 Fed. (2d) 721.....	11
Faitoute v. Asbury Park, 316 U. S. 502.....	7
Fallbrook v. Cowan, 131 Fed. (2d) 513.....	8
Herring v. Modesto, 95 Fed. 705.....	8
Huddleson v. Dwyer, 322 U. S. 232.....	9
In re Madera I. D., 92 Cal. 308.....	8
Provident v. Zumwalt, 12 Cal. (2d) 365.....	11
Selby v. Oakdale I. D., 140 Cal. App. 171.....	6
State of Texas v. Tabasco Cons. School District, 132 F. (2d) 62, 133 F. (2d) 196, 142 F. (2d) 58.....	2, 3, 4, 6, 8
U. S. v. Bekins, 304 U. S. 27.....	9, 13
Wright v. Coral Gables, 137 F. (2d) 192.....	8
Wulff Hansen Co. v. Silvers, 21 Cal. (2d) 274.....	8

Statutes and Texts

Stats. 1933, p. 800	6
Stats. 1897, p. 254	6
43 U. S. C., Section 403	4, 8
11 U. S. C. A. 401-403	8

No. 306

In the Supreme Court of the United States

OCTOBER TERM, 1945

J. R. MASON, PETITIONER

v.

PARADISE IRRIGATION DISTRICT, RESPONDENT

**PETITIONER'S REPLY TO BRIEF FOR RESPONDENT
IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI.**

*To the Honorable Harlan Fiske Stone, Chief Justice
of the United States, and to the Honorable Asso-
ciate Justices of the Supreme Court of the
United States:*

Now comes petitioner filing this reply to respondent's brief opposing the motion.

Respondent significantly makes no attempt to argue or even to question the following, in the instant petition:

"In the case at bar, the R.F.C. is obligated to take refunding 4% bonds as provided in the plan, *regardless of the outcome of this proceeding.*" (Emphasis supplied.)

Respondent argues (p. 7) that the Reconstruction Finance Corporation occupies a different status in the instant proceeding, from that which it occupied in the case of *State of Texas v. Tabasco Cons. School District*, 132 F. (2d) 62, 133 F. (2d) 196, 142 F. (2d) 58, because in the *Tabasco* case "the R.F.C. went out on the open market and bought bonds, becoming thereby an ordinary purchaser with no priority or prior rights. It did not act in the *Texas* case as it did in this case, that is as an agency of the government in the furtherance of a public act of the government for the benefit of the public weal."

Respondent has injected an important question, when he argues that the R.F.C. enjoys "priority and prior rights" in the instant proceeding, which distinguishes this case from the *Texas* case, but fails completely to explain the nature or source of the alleged "prior rights".

But, in any event, the injection of the question by respondent, raises a point of law that calls for due consideration.

Either there are no priorities in the claims of the R.F.C. and petitioner, in which event the *Texas* case can not be distinguished, or on the other hand if there be priorities in the instant case, then there is not a single class of creditors, and the consent of the R.F.C. can not affect the claim of petitioner.

Petitioner has been supplied with the transcript of record in this *Texas* case, which fully supports and substantiates the argument contained in the instant

petition, and completely refutes the contention by respondent that the *Texas* case has no bearing.

Exhibit "B", "Acceptance of Plan of Composition of Indebtedness of Tabasco Cons. Ind. School District, La Joya, Texas", signed by Ronald H. Allen, Asst. Secretary, Reconstruction Finance Corporation, on June 12, 1940, recites in part as follows (R. 13):

"Whereas this Corporation has purchased and now holds bonds aggregating in principal amount \$423,500 * * *

Whereas, the total of said bonds and warrants held by this Corporation as purchaser is in an amount exceeding 92% of the bonded indebtedness of said District * * *

Whereas, said District desires to file a petition * * * under the provisions of Sections 81, 82, 83 * * * in order to effect a plan of composition of its outstanding indebtedness * * *

* * * That such payments will be made from the proceeds of a loan authorized by the R.F.C. and which has been or will be disbursed to or for the benefit of the District for the purpose of reducing and refinancing its indebtedness * * *

Thus the Acceptance by the R.F.C. in the *Texas* case, and in the instant case (R. 12) establish the R.F.C. status as being identical, and the loans made by the R.F.C. in both situations were under Public No. 78, 73rd Congress, approved June 16, 1933. (43 U.S.C., Sec. 403.)

Respondent does not attempt to substantiate or prove his argument made on page 7 that the R.F.C.

"did not act in the *Texas* case as it did in this case, that is as an agency of the government in the furtherance of a public act of the government for the benefit of the public weal".

Petitioner believes that the only authority delegated to the R.F.C. to interest itself in the fiscal affairs of respondent, or of school districts in Texas, is that contained in Public No. 78, 73rd Congress, approved June 16, 1933. (43 U.S.C., Sec. 403.)

During the trial of the *Tabasco* case, the following proceedings were had:

"Mr. Crowe. The Reconstruction Finance Corporation whenever they make these loans, they require you to discharge all your debts and they take that amount of the debt that you haven't got cash money to pay, and then they put that into the form of bonds and lend you the money. They will lend you the money and put that in the form of a bond. That is the way they do. They have done that with all the water (irrigation) districts, and everyone that they have refunded, even open accounts, they did the same thing.

* * * * *

The Court. I expect there was one time when the State of Texas would have been glad to take 65 per cent.

Mr. Crowe. I expect they would. I think this creditor should be entitled to bonds in substitution for those that we now hold, at least have the 4% to apply to replace the loss to the permanent fund.

The Court. In other words, you don't want cash; you want bonds just like the R.F.C.?

Mr. Crowe. That is correct sir.

* * * * *

The Court. Yes. Now your objection is that they are just offering you cash to let the R.F.C. buy your bonds?

Mr. Crowe. That is right. They are asking this Court to require us to sell our bonds to the R.F.C. for 65 cents on the dollar.

The Court. You think instead of having the funds they should have the bonds.

Mr. Crowe. Yes sir. We think to give them a 4% bond is discretionary; that we should have the same class of security as is allowed the consenting creditor * * *

The Court. Counsel for petitioner, for the purpose of voting here the R.F.C. is entitled to vote 100% of the issues it bought, but so far as the composition agreement is concerned, the R.F.C. simply stands here as a bondholder and now actually holds those bonds. /

Mr. Thompson. That is correct.

The Court. The R.F.C. is in the same class as all other bondholders, the same class as the State. The State is in the same class as the R.F.C. Now you propose to issue bonds to the R.F.C. on the basis of 65% of par.

Mr. Thompson. Yes sir.

The Court. You don't propose to issue bonds to the State School Fund? They want the bonds; they don't want the money." (R. 97.)

Mr. Crowe. Why shouldn't we have the same security that the other creditor has? That is, why shouldn't we receive the same treatment? What difference would it make to the petitioner whether we held their bonds or accepted the R.F.C. cash?

The Court. Counsel, I will tell you what I will permit you to do. I will permit you to amend your plan, if it is satisfactory to the R.F.C., which I am sure it will be. Let him take refunding bonds in lieu of cash * * *

This testimony, and the judgment of the Court requiring that refunding 4% bonds be given the objecting bondholder upon the same terms and conditions as the R.F.C. (132 F. (2d) 62, 133 F. (2d) 196, 142 F. (2d) 58) present a conflict with the opinions of the Circuit Court of Appeals for the Ninth Circuit in the instant case (R. 215, 216) as well as in the cases cited in brief for respondent, which has not been, but should be, resolved by this Court.

The unconstitutionality of other statutes designed to give 90% or more of the bondholders of a similar district as respondent, the right to deprive minority bondholders of their lawful rights, was announced by the California Court in *Selby v. Oakdale I. D.*, 140 Cal. App. 171, when Stats. 1933, p. 800, was denounced as invalid. It read:

"Before an action or proceeding by the holders of bonds of an Irrigation District to compel, enforce, *prohibit or restrain* the doing of an act by the district or the Board of Directors thereof may be instituted or maintained, the holders of 10% or more of the duly issued outstanding and unpaid bonds of the district must join in the action or proceeding as plaintiffs, petitioners or applicants for the relief sought." (Emphasis supplied.)

Respondent is a creature of Stats. 1897, p. 254, as amended, which statute, together with the Constitution

of California, is the source of the powers, rights and duties it is invested with. The officers of the District, the R.F.C., and other creditors must look entirely to the State laws for their authority and rights as creditors, and are charged with notice of the limitation of authority vested in the officials of the District. The Congress in approving the amended Chap. IX expressly inhibited any order or decree that would "interfere" (come into collision with) the exercise of "political or governmental powers" of the State, or its political subdivisions to which the State had lawfully delegated its sovereign power of direct *ad valorem* taxation as a base upon which to borrow money. This Court has held squarely that the jurisdiction granted under Chap. IX is carefully limited and restricted, and may be invoked only in cases, and to the extent "authorized by State law".

Faitoute v. Asbury Park, 316 U.S. 502, 508.

There is no provision in any law pursuant to which the bonds owned by petitioner were issued, that authorizes any majority of creditors to "consent" to deprive even the holder of one bond of the vested rights guaranteed him by the Constitution of California, and by Art. I, Sec 10 of the Constitution of the United States.

The contractual relationship between respondent and the R.F.C. is based upon the contract agreed to by the R.F.C. on May 22, 1934. (R. 74.)

Respondent did not even attempt to deny that this contract obligates the R.F.C. to take the refunding 4% bonds for its loan, at 100 and accrued interest, and

"regardless of the outcome of this proceeding"; which makes still more significant the language in the so-called "consent" to the plan by the R.F.C. (R. 12), which alleges not that the R.F.C. "owns" the bonds involved, but "has purchased and now holds bonds aggregating in principal amount * * *"

This Court affirmed the ruling in *Wright v. Coral Gables*, 137 F. (2d) 192, by the Fifth Circuit Court, where the rule was stated:

"The assents must be made by persons in the same situation as those against whom their votes are counted. They must represent a concession and a yielding by the consenting creditors, equivalent to that demanded by those non-assenting but compelled by the plan to accept."

It is too well settled to need citations that neither consent nor submission by holders of local government bonds can validly authorize any Court to permit tax officials to be relieved or excused from performing the duties imposed on them by law. (*Wulff Hansen Co. v. Silvers*, 21 Cal. (2d) 274.) The duties of respondent were again construed in *Herring v. Modesto*, 95 Fed. 705; *In re Madera I. D.*, 92 Cal. 308; *Fallbrook v. Cowan*, 131 Fed. (2d) 513 (cert. denied), and *Provident v. Zumwalt*, 12 Cal. (2d) 365.

The sole authority of R.F.C. to make the loan involved in the *Texas* case, and the instant case is contained in Section 36 of the Emergency Farm Mortgage Act (43 U.S.C., Sec. 403) which was enacted years before 11 USCA 401-403 which forms the base of the instant proceeding.

The first attempt to require petitioner to accept the price offered by the R.F.C., being the identical "plan" approved by the Court below in the instant proceeding, was not permitted (R. 89), because "the Court is without jurisdiction to entertain the petition for readjustment and settlement of the indebtedness of said Paradise Irrigation District * * *".

For these reasons, the instant proceeding must also fail.

2.

Respondent, in answering the second point, argues that this Court in the *U. S. v. Bekins*, 304 U.S. 27, case reversed and repudiated the long settled principle of constitutional law, reaffirmed in *Huddleson v. Dwyer*, 322 U.S. 232, that the substantive and procedural rights of the holders of the bonds of a State or its political subdivision are governed by State law and decisions.

The *Bekin* case reached this Court on a simple demurrer, and presented no question beyond the one raised by the demurrer. No actual facts were presented and the question of federal versus state domination of the sovereign State power to borrow money in anticipation of the collection of direct *ad valorem* taxes was not passed upon in that case. In the light of the explicit inhibitions in Sec. 83 and the broadened severability clause in Sec. 81 it was held that the amended act is "not unconstitutional", but nothing said in the *Bekins* case modified what was said in the *Ashton* case (298 U.S. 513), as follows:

"Neither consent nor submission by the States can enlarge the powers of Congress * * * The sovereignty of the State essential to its proper functioning under the Federal Constitution cannot be surrendered; it can not be taken away by any form of legislation * * *" " * * * for a very long time this court has steadfastly adhered to the doctrine that the taxing power of Congress does not extend to the States or their political subdivisions. The same basic reasoning which leads to that conclusion, we think, requires like limitation upon the power which springs from the bankruptcy clause."

Again, later this Court said in *Arkansas Corp. v. Thompson*, 312 U.S. 673:

"Manifestly, whether or not taxes are 'legally due and owing' to a state depends upon the valid laws of that state. * * * But, there is nothing in the history of bankruptcy or reorganization legislation to support the theory that Congress intended to set the federal courts up as super-assessment agencies over State taxes."

The argument presented on page 14 of the instant petition is neither questioned nor disputed in respondent's brief, and the subjects of law and economics on this page of the petition reach the heart of the controversy.

The rental value of the taxable land within the boundaries of respondent will not be affected in any way, regardless of whether the decree below is sustained or reversed. The sole effect, in either event will be to affect the amount of the net rent, after taxes

which private interests will be allowed to pocket, as unearned increment and capitalize into higher prices which homeseekers will be compelled to pay when acquiring a title deed. Respondent is not only authorized but obligated to administer any and all land that is or may become tax delinquent more than three years, as a beneficent landlord, and to collect the "rents, issues and profits" arising therefrom for the "uses and purposes" of the Act, one of which "purposes" is the fulfillment of lawful obligations.

Provident v. Zumwalt, supra.

Therefore, "neither the general welfare nor the best interests of the soldiers and sailors now fighting abroad, will be protected by depriving petitioner of the substantive rights in his bonds".

That the rights to the "rents, issues and profits" of land are ruled by State and not by Federal law, was reaffirmed in *Comm. v. Skaggs*, 122 Fed. (2d) 721, and certiorari was denied by this Court. Does not this rule apply with equal vigor, when it is not private interests, but the State itself to which "rents, issues and profits of land" lawfully belong, as in the case at bar?

That the bonds owned by petitioner constitute valid, binding and unpaid general obligations of respondent payable from unlimited and continuing direct taxes upon the value of all privately held land within the District, until paid, with interest, is not disputed.

That respondent has the duty and obligation to administer any and all land more than 3 years tax delinquent as a beneficent landlord and the right to the full rent value of all land within its boundaries, ahead of a county, or any other interest public or private,

or as much thereof as may be needed to meet operation and maintenance costs and debt obligations has been decided by the highest State Court.

Therefore the bonds at bar are in legal and practical effect State Rent Control instrumentalities, which the decree below, if sustained, will overrule and set aside and with the same result to the general welfare as though the Court had set aside a Rent Control ruling of the O.P.A., and thus the economic effect of the decree is inconsistent with the purpose of other Federal legislation to curb the private appropriation of rent. It is shown in the petition (p. 15), and not questioned by respondent, that land is the one thing which taxation increases, and that the taxes respondent is required by law to lay "can not increase living costs, but on the contrary stimulate production".

Respondent has cited no opinion by this Court which raises any doubt concerning the dominant power of the State government to control and regulate the private occupancy and to tax the value of land in the exercise of the State's borrowing power, and long established principles of constitutional law are not reversed by implication.

Can it be assumed that Congress, without discussion of the question, intended by a simple statute to effect a new and fundamental transfer of power to it, of so tremendous significance? If the broad construction urged by respondent is permitted, it would vest in Congress an undoubted power to regulate and control all revenues of a State or its local governments, and nullify the doctrine of reciprocal immunity, because where the power exists it can be exerted to destroy, as

it has been used in other republics, in recent years, under pressure by the same economic interests which will reap where they have not sown, if the decree below is not reversed.

The force and effect of feudal privileges has been clarified by the six year war which mankind has waged since the opinion in the *Bekins* case was announced, and in view of the vortex into which mankind now finds itself, the following comment by Jeremiah Sullivan Black, in his time the leader of the American Bar, is respectfully submitted:

"* * * it is precisely in a time of war and civil commotion that we should double the guards on the Constitution * * * in peaceable and quiet times, our legal rights are in little danger of being overborne; but when the wave of arbitrary power lashes itself into violence and rage, and goes surging up against the barriers which were made to confine it, then we need the whole strength of an unbroken Constitution to save us from destruction."

The issue seems clear, "obsta principiis", "resist the beginnings".

CONCLUSION.

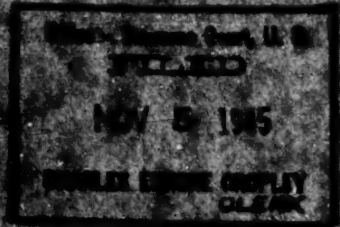
It is submitted that the petition should be granted, the decree of the Court below reversed, and the proceedings directed to be dismissed.

Dated, San Francisco, California,
September 14, 1945.

J. R. MASON,

Petitioner in Propria Persona.

FILE COPY



NOV 5 1945

In the Southern District of the United States

October 1945

J. R. HARRIS, PETITIONER

PARADES IMMIGRATION SERVICE REPORTS

NEW YORK, N.Y.

J. R. HARRIS

1000 Broadway, New York 11, N.Y.

Petitioner in Propria Persona

RECEIVED NOV 5 1945

INDEX

	Pages
Statement of the case.....	1
Argument	3

CITATIONS

Cases:	
<i>Amer. Un. Mut. Life Ins. Co. v. City of Avon Park</i> , 309 U. S. 651	6
<i>Anderson-Cottonwood v. Klukkert</i> , 13 Cal. (2d) 191	App. iv
<i>Anderson-Cottonwood v. Zinzer</i> , 51 Cal. App. (2d) 589 (hearing denied by Cal. Sup. Ct. June 25, 1942)	App. iii
<i>Ashton v. Cameron County</i> , 298 U. S. 513	App. vi
<i>Bankers Trust Co. v. N. Y.</i> , Petition No. 127, Oct. 1944 Term, certiorari denied Oct. 10, 1944	App. ii
<i>Belclair v. Groves (Fla.)</i> , 132 F. (2d) 542	4
<i>Block v. Palm Beach (Fla.)</i> , 112 F. (2d) 949	4
<i>Boskowitz v. Thompson</i> , 144 Cal. 724	App. iv
<i>Clarke v. Rogers</i> , 228 U. S. 533	4
<i>Comm. of Corp. and Taxation v. Williston</i> , 54 N. E. (2d) 43	App. ii
<i>County of Los Angeles v. Rockhold</i> , 3 Cal. (2d) 192	5
<i>El Camino v. El Camino</i> , 12 Cal. (2d) 378	App. iv
<i>Fallbrook v. Bradley</i> , 164 U. S. 112	App. iii
<i>Fallbrook v. Cowan</i> , 131 F. (2d) 513 (cert. denied)	App. iv
<i>1st Nat. Bank v. St. Imp. Dist. No. 326</i> , 48 F. Supp. 225	4
<i>Glenn-Colusa v. Ohrt</i> , 31 Cal. App. (2d) 619	App. iv
<i>Hale v. State Board</i> , 302 U. S. 95	App. vi
<i>Heinie v. Board</i> , 19 Wall. (86 U. S.) 665	App. ii
<i>Herring v. Modesto I. D.</i> , 95 F. 705	App. iv
<i>In re Madera I. D.</i> , 92 Cal. 296	App. iv
<i>In re Western Tool & Mfg. Co.</i> , 142 F. (2d) 404	App. v
<i>Judith Basin I. D. v. Malott</i> , 73 F. (2d) 142	App. iv
<i>Knowlton v. Moore</i> , 178 U. S. 41, 78	App. vi
<i>Lyford v. N. Y.</i> , 140 F. (2d) 840	App. ii, iv

Cases—Continued

	Pages
<i>McLain v. Comm.</i> , 110 F. (2d) 878, affirmed 311 U. S. 527	4
<i>Meriwether v. Garrett</i> , 162 U. S. 472	App. i
<i>Meyerfeld v. So. San Joaquin</i> , 3 Cal. (2d) 409	App. iv
<i>Moody v. Provident</i> , 12 Cal. (2d) 389	App. iii, vi
<i>Morgan County v. Governor of Kentucky</i> , 156 S. W. (2d) 498	5
<i>Provident v. Zumwalt</i> , 12 Cal. (2d) 365	App. iii
<i>Selby v. Oakdale I. D.</i> , 140 Cal. App. 171	5
<i>State of Texas v. Tabasco Ind. Cons. School Dist.</i> , 132 F. (2d) 62, 133 F. (2d) 196, 142 F. (2d) 58	3, 7
<i>State of Village of Brooklyn (Ohio)</i> , 49 N. E. (2d) 684	5
<i>Texas Agr. Assn. v. Hidalgo W. C. & Imp. Dist. No. 1</i> 125 F. (2d) 829	4
<i>Tulare v. Shepard</i> , 185 U. S. 1	App. ii, iii
<i>Tuttle v. Bell</i> , 377 Ill. 510, cert. denied 315 U. S. 815	App. iv
<i>U. S. v. Bekins</i> , 304 U. S. 27	App. i
<i>Wright v. Coral Gables</i> , 137 F. (2d) 192	3
<i>Willard v. Glenn-Colusa</i> , 201 Cal. 726	App. iv

Statutes:

Bankruptcy Act, Chapter IX	4
Judicial Code, Sec. 240(a)	2
R. S. 720	App. i
Stat. 1897, p. 254	App. i
Stat. 1939, Ch. 72	App. vi
28 U.S.C. § 41(1), sub. (3)	App. i
28 U.S.C., Sec. 347(a)	2
11 U.S.C.A. § 164, sub. a(4)	App. i
11 U.S.C.A. §§ 401-403	1, 6
11 U.S.C.A. § 403, sub. c	App. i
11 U.S.C.A. § 526 et seq.	App. v

Miscellaneous:

11 Am. Jur., Conflict of Laws, § 30	App. i
Federalist Essays, Nos. XXXII, XXXIII, Hamilton	App. vi
"Principles of Political Economy" by John Stuart Mill	App. v
"Progress and Poverty" by Henry George	App. v
"Wealth of Nations" by Adams Smith	App. v

No. 306

In the Supreme Court of the United States

OCTOBER TERM, 1945

J. R. MASON, PETITIONER

v.

PARADISE IRRIGATION DISTRICT, RESPONDENT

BRIEF FOR PETITIONER.

STATEMENT OF THE CASE.

This proceeding is ruled by the provisions in 11 U.S.C.A., §§ 401-403. The opinion of the Court below is reported in 149 F. (2d) 334. (R. 215.)

This opinion is in conflict with the opinion by the Fifth Circuit Court of Appeals on the same matter and has departed from the accepted rules of fairness applicable to bankruptcy cases.

The Circuit Court of Appeals, for the Ninth Circuit erred in denying petitioner the privilege of receiving the same refunding 4% bonds, with accrued interest, as given the only other creditor at bar, the R.F.C., and ordering petitioner to accept \$525.21 in cash for each \$1000 par value 6% gold bond.

The judgment of the Circuit Court was entered May 11, 1945. (R. 215.) The jurisdiction of this Court is invoked under Sec. 240(a) of the Judicial Code. (28 U.S.C., Sec. 347(a).)

Petitioner is the owner of \$29,000 par value General Obligation 6% Gold Bonds, dated May 1, 1917 and July 1, 1920, shown in claim. (R. 161.)

The sole consenting creditor is the R.F.C. (R. 12), whose claim rests on bonds which, at the time its consent was given to this proceeding, were "held by it as security for the funds furnished by it" (R. 49) under the provisions of a loan made and disbursed by the R.F.C. in 1934. (R. 87.)

Petitioner offered an adjustment which was accepted by respondent (R. 175), but which was disapproved by the R.F.C. (R. 178-b) and which the District Court permitted respondent to be exonerated from because the R.F.C. warned that it would "withdraw its consent" (R. 178-e) unless the stipulation agreed to was set aside.

Petitioner also offered to accept refunding 4% bonds (R. 181), but this offer was denied by the District Court. (R. 184.) Petitioner appealed, and on appeal the Circuit Court affirmed. (R. 215.)

Certiorari was granted by this Court "limited to the question whether any applicable rule requiring equality of treatment among creditors was violated by the difference between the treatment accorded the peti-

tioner and that accorded the R.F.C. under the approved plan".

ARGUMENT.

Respondent correctly argues that the question here involved has been often raised and decided adversely by the Ninth Circuit Court of Appeals. But the ruling on the same matter by the Fifth Circuit in *State of Texas v. Tabasco Ind. Cons. School Dist.*, 132 F. (2d) 62, 133 F. (2d) 196, 142 F. (2d) 58, conflicts with the Ninth Circuit rulings, for the reasons shown in the petition.

Although petitioner does not question the right of the R.F.C. to "consent" to the instant proceeding, the R.F.C. at the time its consent was given was not in the same relationship with the respondent as petitioner against whom the R.F.C. vote was counted.

The consent of the R.F.C. did not represent any concession or yielding equivalent to that demanded from petitioner and compelled by the plan to accept. This practice was again denounced by the Fifth Circuit Court in *Wright v. Coral Gables*, 137 F. (2d) 192, which ruling was sustained by this Court on March 3, 1944. In that case, the Circuit Court said,

"Consent was given by R.F.C. to bludgeon into submission those with whom the city had not been able to make settlements satisfactory to itself."

On August 19, 1937, the R.F.C. wrote respondent as follows (R. 153):

"Our records indicate that \$29,000² of old bonds
* * * remain outstanding * * *

The Fifth Circuit Court has also held that original bonds are "extinguished" when acquired by the R.F.C. in making a loan to districts under the same authority as the loan to respondent.

McLain v. Comm., 110 F. (2d) 878, affirmed 311 U.S. 527;.

Texas Agr. Assn. v. Hidalgo W. C. & Imp. Dist. No. 1, 125 F. (2d) 829.

This Court said in *Clarke v. Rogers*, 228 U.S. 533:

It is a fundamental principle of bankruptcy that "equality between creditors is necessarily the ultimate aim of the bankruptcy law, and to obtain it we must regard the essential nature of transactions, not their forms."

Other petitions under Chapter IX which were disapproved on the ground that they failed to meet the test of equality between creditors, are reported in *Block v. Palm Beach* (Fla.), 112 F. (2d) 949; *Belleair (Fla.) v. Groves*, 132 F. (2d) 542.

The rule governing the rights of holders of pledged bonds is reviewed at length by the learned judge of the United States District Court for Arkansas in *1st Nat. Bank v. St. Imp. Dist. No. 326*, 48 F. Supp. 225.

That no majority can deprive a minority bondholder of his rights in bonds issued under the same law as the bonds at bar, was settled by the California Court in *Selby v. Oakdale I. D.*, 140 Cal. App. 171, at page 176, where that Court said:

"As to the right of the parties to prosecute this action we agree with counsel that Sec. 113 (Stat. 1933, p. 800), added to the California Irr. Dist. Act by an Act of the legislature approved May 9, 1933, is ineffective for any purpose. Its unconstitutionality is so apparent that citation of authority seems needless * * * It is evident that the legislature has no power to limit the right of any one of whose property interests have been invaded to seek redress through the courts unless joined by others owning like property."

Similar statutes impairing minority rights were denounced in *County of Los Angeles v. Rockhold*, 3 Cal. (2d) 192; *State v. Village of Brooklyn (Ohio)*, 49 N.E. (2d) 684; *Morgan County v. Governor of Kentucky*, 156 S.W. (2d) 498.

Here, the relationship between the consenting creditor (R.F.C.) and the State agency is ruled, not by the original 6% bonds, but by the provisions in a contract executed in 1934 (R. 141) which contract is not subject to change if this proceeding is dismissed. The consent filed by the R.F.C. to this proceeding is solely for the purpose of improving their loan, and does not in any way represent a concession or yielding from the contract relationship existing between R.F.C. and

respondent, when the so-called consent was given in 1937. (R. 12.) The resolution of respondent (R. 148) shows that only "\$29,000 of original bond issues are outstanding and unrefinanced" on August 30, 1937. It was not until November 4, 1937, that this proceeding commenced. (R. 5.) Therefore petitioner as the holder of original 6% bonds occupied a different position than R.F.C. which had firmly obligated itself in 1934 to take refunding 4% bonds at 100 and interest equal to the amount it had disbursed, and which was long before the passage of 11 U.S.C.A. 401-403.

It is only necessary, however, to show that petitioner and the R.F.C. are creditors of equal standing. This is clear.

The contract relation between R.F.C. and respondent, when this proceeding commenced, appears very similar to the relationship between the consenting creditors and the debtor in the case of *Amer. Un. Mut. Life Ins. Co. v. City of Avon Park*, 309 U.S. 651, where this Court said:

"Compositions under Ch. IX, like compositions under the old § 12, 11 U.S.C.A. § 30, envisaged equality of treatment of creditors. Under that section and its antecedents, a composition would not be confirmed where one creditor was obtaining some special favor or inducement not accorded to others * * * That rule of composition is but part of the general rule of 'equality between creditors' (*Clarke v. Rogers*, 228 U.S. 534, 548) applicable in all bankruptcy proceedings. That prin-

ciple has been imbedded by Congress in Ch. IX by the express provision against unfair discrimination. That principle, as applied to this case necessitates a reversal."

Petitioner's contention is that the facts in the instant case are like those in the *Tabasco* case, supra. In that case (133 F. (2d) 196), after rehearing, the Court said:

"Reconstruction Finance Corporation appears in the record as the outright owner by purchase prior to June, 1940, of 92% of the bonds of Tabasco Cons. Ind. School District, and as such owner accepted the offer of composition. The State of Texas owns the remaining bonds and refused acceptance. The decree finds that all bondholders are of one class, and is based on the acceptance of R.F.C. It also finds that the plan it approves does not discriminate unfairly in favor of any creditor, but we think it clearly does. The State is to get 65% of the face of its bonds (as bonds not purchased by R.F.C.) in cash. R.F.C. is to get the money expended by it for the purchase of old bonds of petitioner as herein provided with interest on all disbursements for such purposes at 4% per annum from date thereof. It is not to deposit its bonds with the disbursing agent, but is to be paid with the new 4% bonds to be issued. It is plainly getting new 4% bonds for its investment, with interest added, in exchange for the old bonds it owns, bought at 65 over three years ago. The State is to get 65, without interest, and in cash, though it considers new 4% bonds more desirable.

R.F.C. is not an outside lender of money, or purchaser of new bonds, but is the majority bondholder, controlling the fate of this composition. It is entitled to nothing more than or different from what the minority receives. The argument that it will not make a loan unless for the entire bond issue, because it will refuse to be a co-creditor, does not carry weight. It is a co-creditor now. Rehearing denied."

In the instant case the R.F.C. claims to be the holder of all but the \$29,000 original 6% bonds. Petitioner is the owner and holder of those twenty-nine bonds. The decree finds that the R.F.C. holds the other original 6% bonds "as security for the funds furnished by it" (R. 49) and the District Court also finds "all of the creditors of petitioner District effected by said plan of composition constitute but one class". (R. 37.) It also finds that the "plan of composition as offered by the petitioner herein is fair, equitable and for the best interest of its creditors, and does not discriminate unfairly in favor of any creditor or class of creditors". (R. 46.)

Petitioner is ordered to accept in cash \$525.21 for each \$1000 par value 6% gold bond, with only a fraction of many years' defaulted interest.

The R.F.C. is to get not cash, but long term refunding bonds, with 4% interest on all funds invested by the R.F.C., and also get 4% interest to maturity of the new long term bonds. The discrimination is clear.

Wherefore, petitioner respectfully prays that the decree below be reversed, and the proceedings directed to be dismissed, and that petitioner have such other relief in the premises as to this Honorable Court may seem meet and just.

Dated, San Francisco, California,
October 29, 1945.

J. R. MASON,

Petitioner in Propria Persona.

Because of the limitation in the order of this Court, the second question presented in the instant petition is not discussed in this brief. But, due to its fundamental importance, it is briefly discussed in the appendix, should this Court be willing to read what is therein respectfully discussed.

(Appendix Follows.)

Appendix

The second question presented in the instant petition, and which is not discussed in the supplemental brief, may be rephrased as follows:

(1) May Congress constitutionally interfere with the execution of a valid State land-tax statute (Stat. 1897, p. 254), when such action invades vested property rights of a third party secured by the Federal Constitution?

(2) Does the decree of the District Court, as construed and applied, have the force and effect of arresting the execution of the State land-tax statute forming the base of the rights and obligations of petitioner and respondent, and is it not inconsistent with the inhibitions in 11 U.S.C.A. § 104, sub. a(4); 11 U.S.C.A. § 403, sub. c; 28 U.S.C. § 41(1), sub. (3); R.S. 720; 11 Am. Jur., Conflict of Laws, § 30?

This same question was not presented in the *U. S. v. Bekins*, 304 U.S. 27, case, and any language in that opinion must be considered in connection with the nature of the questions which were presented. Any general language used in that opinion is not here controlling.

Petitioner finds nothing in that opinion that modifies what this Court said in *Meriwether v. Garrett*, 102 U.S. 472, as follows:

"The judicial department can not prescribe to the legislative department limitations upon the exercise of its acknowledged powers."

Or in *Heinic v. Board*, 19 Wall. (86 U.S.) 665, as follows:

"It is not only not one of the inherent powers of the court to levy and collect taxes, but it is an invasion by the judiciary of the federal government of the legislative functions of the state government."

The Supreme Judicial Council of Massachusetts, in the recent case of *Comm. of Corp. and Taxation v. Williston*, 54 N.E. (2d) 43, said:

"Decision of United States Supreme Court in construing federal statute was entitled to due deference and respect, but was not binding on Supreme Judicial Council in construing Massachusetts taxing statute."

This same basic question was presented in the case of *Lyford v. N. Y.*, 140 F. (2d) 840, which reached this Court as *Bankers Trust Co. v. N. Y.*, Petition No. 127, Oct. 1944 Term; certiorari was denied Oct. 10, 1944.

Just as the State of New York was entitled to a lien for unpaid amounts due under the R.R. Grade Crossing Act, so is the State of California entitled to a lien on any tax delinquent privately held taxable land within the boundaries of respondent, and has delegated to respondent full power and the duty to ad-

minister such land, and to collect the "rents, issues and profits" therefrom for the "uses and purposes of the Act", among which purposes is the fulfillment of contract obligations.

The Second Circuit Court said, in that case:

"Since the installments remain continuing obligations of this debtor and any successor in title, as they become due, no plan of reorganization can be feasible and hence acceptable which does not arrange for their payment and thus in substantial effect safeguard the ultimate interests of the state."

The California Supreme Court has clearly and unequivocally ruled that the installments of direct ad valorem land-taxes sufficient to fulfill the obligations in the bonds owned by petitioner remain continuing obligations of every private holder of land-title, and must be levied and collected, and their proceeds, or the revenue derived from the usufruct of the land must be applied according to state law.

Provident v. Zumwalt, 12 Cal. (2d) 365;

Moody v. Provident, 12 Cal. (2d) 389;

Anderson-Cottonwood v. Zinzer, 51 Cal. App.

(2d) 589 (hearing denied by Cal. Sup. Ct.

June 25, 1942).

Also, see:

Fallbrook v. Bradley, 164 U.S. 112;

Tulare v. Shepard, 185 U.S. 1;

Anderson-Cottonwood v. Klukkert, 13 Cal. (2d) 191;

Herring v. Medesto I. D., 95 F. 705;

Glenn-Colysa v. Ohrt, 31 Cal. App. (2d) 619;

Boskowitz v. Thompson, 144 Cal. 724;

In re Madera I. D., 92 Cal. 296;

Fallbrook v. Cowan, 131 F. (2d) 513 (cert. denied);

Meyerfeld v. So. San Joaquin, 3 Cal. (2d) 409;

Judith Basin I. D. v. Malott; 73 F. (2d) 142;

Willard v. Glenn-Colusa, 201 Cal. 726.

These cases leave no possible doubt that the economic interests that will receive an unprecedented windfall, if the decree of the Court below stand, are the same as would have profited, had the ruling in *Lyford v. N. Y.*, *supra* been different. The same basic conflict of interest was the bottom question in *Tuttle v. Bell*, 377 Ill. 510, cert. denied 315 U.S. 815. In that case it was ruled that private holders of land-titles can not get an injunction in a Federal Court to arrest the execution of a State land-tax statute. But, the same rule must govern, whether the action is sought by the holders of taxable land themselves, or by their elected officials seeking exoneration from their mandatory duty in a federal forum.

Respondent, being the *alter ego* of the State, all of whose property and revenues are State owned (*El Camino v. El Camino*, 12 Cal. (2d) 378), is without

any pecuniary interest in the instant proceeding, and by the provisions in 11 U.S.C.A. § 526 et seq., has no judicial standing in a Bankruptcy Court.

In re Western Tool & Mfg. Co., 142 F. (2d) 404.

Differing from usual ad valorem taxes, the taxes lawfully payable to respondent by private holders of land-titles are in no respect taxes on land, nor upon buildings or any planted orchards, or other improvements made by the land holder, but they are levied only upon and in proportion to the assessed valuation of the land subject to tax.

Thus, those holding land with low assessed value pay only a small fraction in taxes, per acre, of the amount payable annually by the holders of the more valuable land.

Such taxes, levied on the value of land, instead of on the land at a flat rate per acre, fall wholly on the private holders of land-titles, as owners, and can not be shifted to a tenant or anybody else, and can not increase living costs. See "Wealth of Nations" by Adam Smith, "Principles of Political Economy" by John Stuart Mill, "Progress and Poverty" by Henry George.

This species of tax is clearly a "direct" tax, and thus within the constitutional command of apportionment, and always before held to be within the exclusive field of the States, and independent and uncontrollable under any clause in the Federal Constitution, when

exercised by the States. See Federalist Essays, Nos. XXXII, XXXIII, Hamilton.

Hale v. State Board, 302 U.S. 95;

Knowlton v. Moore, 178 U.S. 41, 78.

The California Courts have held clearly and unequivocally that the bonds issued under the same statutes as the bonds at bar, are mere tax anticipation and revenue notes, and that after delivery there is no future obligation upon them, either absolute or contingent to pay out anything except the taxes and revenues anticipated, when collected.

Provident v. Zumwalt, supra;

Moody v. Provident, 12 Cal. (2d) 389.

Stat. 1939, Ch. 72, does not purport to take away rights created by former legislation for the security of the bonds, at bar, but merely consents to "proceedings permitted by Sections 81/84" of Federal law.

Therefore, unless Congress may, by simple statute, constitutionally supervise or interfere with the execution of valid State land-taxing statutes, and Sec. 83c is construed to read that such interference is permitted, the so-called State consent is of no effect in this case. "Neither State consent nor submission can enlarge the powers of Congress."

Ashton v. Cameron County, 298 U.S. 513.

FILE COPY

FILED - Supreme Court, U. S.
FILED.

SEP 10 1945

CHARLES ELMORE DUFFLEY
CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1945

No. 306

R. MASON,

Petitioner,

VS.

PARADISE IRRIGATION DISTRICT,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI.

P. M. BARCELLOUX,

Orlando, California,

Attorney for Petitioner.

J. S. CLEWELL,

Orlando, California,

JOHN D. PETERS,

Orlando, California,

of Counsel.

Subject Index

Statement	Page 1
Petitioner's Specification of Errors	3
Reasons Why Writ Should Be Denied	4
Conclusion	9

Table of Authorities Cited

Cases	Pages
Lorber v. Vista Irrigation District, 127 Fed. (2d) 628, 143 Fed. (2d) 282	5
State of Texas v. Tabasco Cons. School District, 132 Fed. (2d) 62, 133 Fed. (2d) 196, 142 Fed. (2d) 58	7
United States v. Bekins, et al., 58 S. Ct. 811, 304 U.S. 27	8
West Coast Life Insurance Company v. Merced Irrigation District, 114 Fed. (2d) 654	5
Young v. Higbee Co., et al., 65 S. Ct. 594	8

Statutes

Bankruptcy Act, paragraphs 78-80, added by Act May 24, 1934, 11 U. S. C. A., Sections 301 to 303	2
Federal Constitution, Article I, Section 8	8
Public Act No. 302, approved August 16, 1937	2, 4

In the Supreme Court

OF THE
United States

OCTOBER TERM, 1945

No. 306

J. R. MASON,

vs.

PARADISE IRRIGATION DISTRICT,

Petitioner,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Comes now the respondent Paradise Irrigation District, and files its opposing brief to the petition of petitioner.

STATEMENT.

The statement of the petitioner is substantially correct, although, for a full understanding of the matters involved, respondent believes certain additional matters should be set forth.

The original petition for debt composition of respondent was filed in 1936 in pursuance of paragraphs 78-80 of the Bankruptcy Act, added by Act May 24, 1934, 11 U. S. C. A.; sections 301 to 303. Subsequently the latter act was held unconstitutional and the petition ordered dismissed because thereof. The next public act dealing with municipal bankruptcy was Public Act No. 302, approved August 16, 1937, which act was an amendment to "an Act to establish a uniform system of bankruptcy throughout the United States" as approved July 1, 1898, and upon December 20, 1937, respondent filed in the District Court, Northern District of California, its petition for confirmation of composition. (R. 1.) The proceedings have been in Court continuously since said date. The petitioner filed his answer and the matter went to trial upon March 16, 1939; upon February 3, 1941, said District Court entered its findings of fact and conclusions of law (R. 26) and its interlocutory decree. (R. 44.) From such decree the petitioner took an appeal and the United States Circuit Court of Appeals, Ninth Circuit, after hearing, remanded the cause to the lower Court for clarification of two issues:

(1) The maximum amount the District is reasonably able to pay its bondholders in the circumstances, and

(2) To clarify its findings on the question whether the plan of composition provides for deductions from the amount to be paid for coupons which have been voluntarily paid by the District.

The case was again called for trial before the District Court, and in the District Court petitioner offered to amend his answer, by including therein an answer that he be permitted to accept four per cent bonds with accrued interest rather and instead of being required to accept the \$525²¹ cash for each \$1000 par value six per cent gold bond, as required by the interlocutory decree and as contemplated by the plan of composition. The motion was denied by the District Court on two theories, one, that the said answer was before the District Court on the first hearing, and before the Appellate Court on the appeal, and second, that the point had been decided by the higher Courts adverse to appellant's request.

Upon the hearing on remand to the District Court, the latter clarified the question of whether the composition provides for deductions from the amounts to be paid for coupons which were voluntarily paid by the District in appellant's favor, but decided that the composition figure was the maximum amount the District was reasonably able to pay its bondholders in the circumstances. From this petitioner again appealed to the United States Appellate Court, Ninth Circuit, and it is as to the latter Court's decision that petitioner now seeks a writ of certiorari.

PETITIONER'S SPECIFICATION OF ERRORS.

Petitioner contends that the Circuit Court of Appeals erred in two matters, namely;

1. In denying petitioner the privilege of receiving the same refunding 4% bonds with accrued interest, as given the only other creditor at bar, the R.F.C., and ordering petitioner to accept \$525.21 cash for each \$1000 par value 6% gold bond, the latter being the composition figure approved.

2. In sustaining the decree of the District Court which petitioner claims unlawfully deprives him of substantive and procedural rights governed by State law and decisions, in contravention of State law, the source of the substantive rights and duties of the parties.

REASONS WHY WRIT SHOULD BE DENIED.

1. The proceedings are admitted to be under said Public Act No. 302. This act and acts following it similar in type and character have been consistently approved by this Court and other Federal Courts, and the right of the appellant and other appellants to take bonds of the debtor District in lieu of the cash composition figure, has been passed upon many times, all adversely to the right.

The petition of the District for confirmation of the plan of composition (R. 1) and the exhibits attached thereto disclose in full the plan of composition of the District. The R.F.C. in loaning the money to the District was acting in pursuance of its governmental function for the financial relief of Districts in distress. The plan involved the paying out of money only on the surrender of bonds for cancellation. Appel-

lant's bonds were not so delivered and hence no money has been paid to him, but is available to him when, as and if voluntarily or through decree of Court, he delivers his bonds. Appellant maintains that he desires the bonds instead of the cash and contends he has legal right thereto. This contention was decided adverse to the petitioner in

West Coast Life Insurance Company v. Merced Irrigation District, 114 Fed. (2d) 654;

Lorber v. Vista Irrigation District, 127 Fed. (2d) 628, 143 Fed. (2d) 282.

In the action of *West Coast Life Insurance Company v. Merced Irrigation District*, 114 Fed. (2d) 654, at page 677, the Court in answer to the contention of the West Coast Life Insurance Company that the plan of composition made by said Merced Irrigation District was unfair, states as follows, to-wit:

"The first contention is as follows:

'Assuming that R.F.C. is a creditor of the same standing as the appellants, the plan is unfair because it offers a 4% bond to the R.F.C., but denies a like privilege to the appellants.' "

This is exactly the contention made here under the proposed amendment to the answer of petitioner. In answering such contention the Circuit Court of Appeals, Ninth Circuit, states:

"Appellants misconstrue the plan and the relationship existing between the District and R.F.C. As we heretofore said, R.F.C. agreed to furnish money to the District to refinance its entire bonded indebtedness at \$515.01 for each \$1,000 bond. The

obligation assumed by R.F.C. was subject to the condition that all old securities should be purchased and held by R.F.C. until R.F.C. was satisfied that refinancing was complete. During this time, the old securities were to be kept alive and outstanding. When the refinancing was complete, then and then only was R.F.C. under the duty of buying and accepting refunding bonds, and surrendering the old securities for cancellation.

As stated by the Supreme Court in *Zavelo v. Reeves*, 227 U.S. 625, 632, 33 S.Ct. 365, 368, 57 L.Ed. 676, Ann. Cas. 1914D, 664.

'With respect to the money loaned to the bankrupt for use in paying the consideration of the composition, it is perhaps worth while to remark that Par. 12 of the act. (11 U.S.C.A. No. 30), in prescribing of the time and mode of offering terms of composition, plainly contemplates that a composition in money may be offered, and expressly prescribes that an application for the confirmation of a composition may be made after, but not before, 'The consideration to be paid by the bankrupt to his creditors, and the money necessary to pay all debts which have priority, and the cost of the proceedings, have been deposited in such places as shall be designated by, and subject to the order of, the judge.' And the same section provides that 'Upon the confirmation of a composition the consideration shall be distributed as the judge shall direct, and the case dismissed.'

'The act, of course, contemplates that the bankrupt may acquire the money required for the purposes of the composition by the use of his credit.'

In the present case R.F.C. has contracted to furnish the money necessary to make the composition

effective, and to accept in turn refunding bonds at 4% for the amount of its advance. As holder of the old securities, it is treated exactly as are all other bondholders, it will receive 51.501¢ on the dollar."

From the foregoing it is seen that petitioner's contention has been decided adverse to him.

° Petitioner quotes as an authority in support of his contention the decision in the *State of Texas v. Tabasco Cons. School District*, 132 Fed. (2d) 62, 133 Fed. (2d) 196, 142 Fed. (2d) 58. This case has no bearing; there the R.F.C. went out on the open market and bought bonds, becoming thereby an ordinary purchaser with no priority or prior rights. It did not act in the *Texas* case as it did in this case, that is as an agency of the government in the furtherance of a public act of the government for the benefit of the public weal.

It is pointed out that the old bonds of the District having a face value of \$476,000.00 have not yet been either returned to the District or destroyed and under the agreement with the R.F.C. are not to be until the plan of composition is concluded, which of course will not be until petitioner's bonds are deposited to be delivered to the R.F.C. upon the payment of the composition figure.

2. Petitioner in his second point contends that the judgment contravenes the well settled rule that State law and decisions govern the substantive and procedural rights of the holders of the bonds of a State or its political subdivision.

The power of Congress to enact a bankruptcy law is derived from provisions in the Federal Constitution. (Article I, Section 8.)

Historically, a prime purpose of bankruptcy law has been to bring about a ratable distribution among creditors of bankrupt assets, and to protect creditors from one another (*Young v. Higbee Co., et al.*, 65 S.Ct. 594); in the instant case the petitioner is seeking preference which no other creditors sought or received. The other creditors received the composition figure, which has been and is now offered the petitioner. The petitioner seeks to claim that he is a creditor of the same status as the R.F.C., but it has been held that a nonassenting creditor in a bankruptcy composition proceedings is not a similar creditor to the R.F.C., but that such a one is in the same class of creditors as original bondholders who accepted the composition; thus petitioner's effort is to receive something more and additional to other bondholders.

The particular point made by the petitioner was passed upon adversely to the petitioner in *United States v. Bekins, et al.*, 58 S.Ct. 811, 304 U.S. 27 (the petition for composition in which action was filed in the District Court on September 21, 1937, the petition in the instant case being filed upon December 20, 1937); this Court held therein that the Municipal Corporations Bankruptcy Act providing for composition of debts of described taxing agencies is not unconstitutional as violative of the Fifth Amendment. Also, that the statute is carefully drawn so as not to impinge upon the sovereignty of the states.

In view of this Court's holding on the very point here considered, the point is not well taken.

3. In addition the petition should be denied because petitioner has not invoked all legal remedies prior to his filing of the petition, he having not petitioned the Appellate Court for a rehearing.

CONCLUSION.

It is respectfully submitted that the petition should be denied; similar petitions under similar facts have been repeatedly denied by this Court.

Dated, Chico, California,
September 5, 1945.

Respectfully submitted,
P. M. BARCELOUX,
Attorney for Petitioner.

H. S. CLEWETT,
JEROME D. PETERS,
Of Counsel.

INDEX

CITATIONS

Cases:	Pages
<i>Anderson-Cottonwood v. Klukkert</i> , 13 Cal. (2d) 191...	16
<i>Arkansas Corp. v. Thompson</i> , 312 U. S. 673, 313 U. S. 362	3
<i>Ashton case</i> , 298 U. S. 513	7
<i>Bates & McHenry</i> , 123 Cal. App. 81	4
<i>Bekins case</i> , 304 U. S. 27	7, 13
<i>Board of Directors v. Tregca</i> , 88 Cal. 334	4
<i>Boskowitz v. Thompson</i> , 144 Cal. 724	4
<i>Brush v. Compn.</i> , 300 U. S. 352	3
<i>Cowan v. Fallbrook</i> , 131 F. (2d) 513	16
<i>Cross Lake Club v. La.</i> , 224 U. S. 632	10
<i>Doty v. Love</i> , 295 U. S. 64	19
<i>El Camino v. El Camino I. D.</i> , 12 Cal. (2d) 378	3
<i>El Dorado I. D. v. Browne</i> , 216 Cal. 269	4
<i>Faitoute v. Asbury Park case</i> , 316 U. S. 502	13
<i>Fallbrook v. Cowan</i> , 131 Fed. (2d) 513	5
<i>Fallbrook I. D. v. Bradley</i> , 164 U. S. 112	4
<i>Groves v. N. Y.</i> , 306 U. S. 466	20
<i>Helms v. Holmes</i> , 129 F. (2d) 263	19
<i>Herring v. Modesto I. D.</i> , 95 Fed. 705	4
<i>Huddeson v. Dwyer</i> , 322 U. S. 232	12
<i>In re Madera I. D.</i> , 92 Cal. 296	4
<i>International Shoe Co. v. Washington</i> , No. 107 (1945)	6
<i>Meyerfeld v. S. San Joaquin</i> , 3 Cal. (2d) 409	5
<i>Moody v. Provident I. D.</i> , 12 Cal. (2d) 389	5
<i>N. Y. Chgo. & St. L. R. Co. v. Frank</i> , 314 U. S. 361	5
<i>Pillsbury case</i> , 105 U. S. 278	5
<i>Pollock v. Farmers L. & T. Co.</i> , 158 U. S. 601	3
<i>San Diego v. Childs</i> , 217 Cal. 109	4
<i>Selby v. Oakdale I. D.</i> , 140 Cal. App. 171	4
<i>Shouse v. Quinley</i> , 3 Cal. (2d) 357	4

Cases—Continued.

Pages

<i>Skaggs v. Comm.</i> , 122 Fed. (2d) 721 (cert. denied No. 866, March 2, 1942)	6
<i>So. Pac. Co. v. Stibbens</i> , 103 Cal. App. 609.....	4
<i>State of New York v. U. S. # 5 judgment</i>	3, 20
<i>Tulare I. D. v. Shepard</i> , 185 U. S. 1.....	4
<i>W. U. Tel. Co. v. Modesto I. D.</i> , 149 Cal. 662.....	4
<i>Willard v. Glenn-Colusa I. D.</i> , 201 Cal. 726.....	4
<i>Williams v. Cooper</i> (1899), 124 Cal. 666.....	16
<i>Wilson v. Standifer</i> , 184 U. S. 399.....	3
<i>Wood v. Lovett</i> , 313 U. S. 362.....	9, 10
<i>Wore v. Imperial I. D.</i> , 193 Cal. 609.....	4
<i>Wright v. Coral Gables</i> , 137 Fed. (2d) 192, 64 S. Ct. 779	17

Statutes and Constitution:

Bankruptcy Act, Chapter IX	1, 2, 5, 7, 11, 13, 18
California Revenue and Taxation Code, Chapter 9, Part 6, Division I	17
81 Cong. Rec. 6313	19
73rd Congress, Sec. 36, Public No. 78.....	10
265 Jud. Code, 28 USCA Sec. 379.....	19
Statutes 1937, Chapter 24	13
Statutes 1939, Chapter 72	10
Statutes 1943, Chapter 368, Sec. 26301.....	17
11 USC, Secs. 301-304	7
11 USC, Secs. 401-403	11
11 USC, Sec. 403(d), Sec. 83(d).....	18

Miscellaneous:

11 Am. Jur., Conflict of Laws, Sec. 30.....	6
23 California Law Review, March, 1935, page 264....	16
Emporia Gazette, August 20, 1941.....	16
30 Ops. 352	7
38 Ops. 563	7
San Francisco News, November 12, 1945.....	15
The Federalist, XXXIII, by Hamilton.....	6

In the Supreme Court of the United States

OCTOBER TERM, 1945

J. R. MASON, PETITIONER

v.

PARADISE IRRIGATION DISTRICT, RESPONDENT

PETITION FOR A REHEARING.

*To the Honorable Harlan Fiske Stone, Chief Justice
of the United States, and to the Honorable Asso-
ciate Justices of the Supreme Court of the
United States:*

Comes now J. R. Mason, petitioner *in propria per-
sona* requesting a rehearing on the judgment in the
above entitled cause, upon the following substantial
grounds:

The judgment, because it contains no language re-
solving the second question presented in the peti-
tion, which question raises squarely constitutional
and jurisdictional principles of fundamental impor-
tance, and because the question raised in a proceed-
ing under Chapter IX of the Bankruptcy Act, has

not been settled by this Court by any case cited by respondent, or in the judgment, it is again respectfully presented, as follows:

Whether the judgment contravenes the well settled rule that State law and decisions govern the substantive and procedural rights of holders of the bonds of a State, or its Political Subdivisions, issued under authority of the sovereign power of the State to borrow money, and that such power when exercised, is immune, with or without State consent, from the will of Congress, or its Courts.

Petitioner is not discussing the constitutionality of the amended Chapter IX of the Bankruptcy Act, which forms the base of the instant proceeding, but only whether federal or state law and decisions govern and control his substantive and procedural rights embodied in the valid, binding and unpaid bonds and interest coupons shown in his proof of claim (R. 161) which are impaired by the decree below, which decree includes a restraint involving the levy and collection of taxes, unauthorized by any law. (R. 53.)

The bonds owned by petitioner, which the instant judgment impairs, are merely evidences of the exercise of a sovereign State activity, promising the holder repayment from State-owned property. They thus "partake of uniqueness from the point of view of intergovernmental relations, inherently constituting a class by themselves" within the classification still

remaining immune from the sphere of sovereignty of the federal government, as that boundary was reaffirmed by this Court on January 15, 1946, in the *State of New York v. U. S.* # 5 judgment.

The activities which respondent has been delegated authority to exercise by the State, were clearly and unequivocally ruled as "exclusively governmental" in *El Camino v. El Camino I. D.*, 12 Cal. (2d) 378. Dictum by this Court in *Brush v. Comm.*, 300 U. S. 352, 366-369, is also submitted in proof of the nature of the activities of respondent.

This Court said, in its judgment, "Being unable to collect taxes sufficient to service the bonds * * *". Has this Court not steadfastly adhered to the principle that the ability or inability of states, or of their tax instrumentalities, to collect such direct *ad valorem* land taxes as are involved here, "uniquely" a function of the state, presents no federal question, and threatens no federal right? No more would the inability of Congress to collect taxes on imports threaten a state function. Petitioner had supposed this rule of reciprocal immunity was settled in *Pollock v. Farmers L. & T. Co.*, 158 U. S. 601, and *Arkansas Corp. v. Thompson*, 312 U. S. 673, 313 U. S. 362.

In *Wilson v. Standifer*, 184 U. S. 399, 412, this Court said:

"Especial respect should be had to such decisions when the dispute arises out of general laws of a State, regulating its exercise of the taxing power,

or relating to the State's disposition of its public lands."

The instant dispute clearly "arises out of the general laws of a state; regulating its exercise of the taxing power, and relating to the State's disposition of its public (tax-revested) lands." The state law governing the rights of petitioner, and the RFC claim and the powers and duties of respondent, was construed by this Court in *Fallbrook I. D. v. Bradley*, 164 U. S. 112. There has been perhaps no state law oftener before the California and Federal Courts since that historic decision in the *Fallbrook* proceeding, and nearly always because it was contended that some district was "unable to collect taxes". A few of the subsequent cases are,

Tulare I. D. v. Shepard, 185 U. S. 1;
Herring v. Modesto I. D., 95 Fed. 705;
W. U. Tel. Co. v. Modesto I. D., 149 Cal. 662;
So. Pac. Co. v. Stibbens, 103 Cal. App. 609;
Board of Directors v. Tregea, 88 Cal. 334;
Boskowitz v. Thompson, 144 Cal. 724;
In re Madera I. D., 92 Cal. 296;
Wore v. Imperial I. D., 193 Cal. 609;
El Dorado I. D. v. Browne, 216 Cal. 269;
San Diego v. Childs, 217 Cal. 109;
Bates v. McHenry, 123 Cal. App. 81;
Willard v. Glenn-Colusa I. D., 201 Cal. 726;
Selby v. Oakdale I. D., 140 Cal. App. 171;
Shouse v. Quinley, 3 Cal. (2d) 357;

Meyerfeld v. S. San Joaquin, 3 Cal. (2d) 409;
Moody v. Provident I. D., 12 Cal. (2d) 389;
Fallbrook v. Cowan, 131 Fed. (2d) 513 (cert.
 denied).

State laws governing the rights of both the RFC and of petitioner afford complete means for dealing with this dispute. Those laws are in force. They are the laws to which resort must be had to validly effectuate any "composition" which Chapter IX of the Bankruptcy Act on which this proceeding is based, may have been enacted to facilitate. There is nothing in Chapter IX which nullifies the valid, existing state laws out of which the dispute here arises. It is not shown that the claims of RFC or petitioner involve a function within the control of the Congress, or its Courts, or that this Court has ever so ruled, in a dispute based on any federal statute which springs from either the taxing or bankruptcy clause. Therefore, the judgment in the instant case is inconsistent with the rule that "we should give full faith and credit to the acts of sovereign States", decided in *N. Y. Chgo. & St. L. R. Co. v. Frank*, 314 U. S. 361, 366. The *Moody v. Provident* case, *supra*, brings the bonds owned by petitioner clearly and unequivocally under the rule stated by this Court in the *Pillsbury* case (105 U. S. 278), as follows:

"The annual tax was the security offered creditors; and it could not be afterward severed from the contract."

"It is universally held that real or immovable property is exclusively subject to the law of the country or state in which it is situated, and no interference with it by the law of any other sovereignty is permitted." 11 Am. Jur., Conflict of Laws, §30.

This constitutional principle was adhered to in a dispute over the scope of federal v. state power arising out of the claims of a private holder of a land-title in *Skaggs v. Comm.*, 122 Fed. (2d) 721 (cert. denied No. 866, March 2, 1942).

In *The Federalist*, XXXIII, by Hamilton, the following cogent language appears:

"Suppose, again, that upon the pretence of an interference with its revenues, it should undertake to abrogate a land-tax imposed by authority of the State; would it not be equally evidence that this was an invasion of that concurrent^c jurisdiction in respect of this species of tax, which its Constitution plainly supposes to exist in the State governments? If there should be a doubt on this head, the credit of it will be entirely due to those reasoners who, in the imprudent zeal of their animosity to the plan of the convention, have labored to obscure the plainest and simplest truths."

In *International Shoe Co. v. Washington*, No. 107, decided Dec. 3, 1945, Mr. J. Black concurring, said:

"I believe that the Federal Constitution leaves to each State, without any 'ifs' or 'buts', a power to tax. * * * I think it a judicial deprivation to con-

dition its exercise upon this Court's notion of fair play, however appealing that term may be * * *

Petitioner fully agrees that the "purpose" of Chapter IX is to "provide taxing agencies with a method of ~~sealing down their debt structures~~", as said in the instant judgment. But it was the same "purpose" that prompted the passage of the original Chapter IX, 11 U. S. C. § 301-304 denounced as unconstitutional for that very reason, by this Court in the *Ashton* case. (298 U. S. 513.)

A great liberal jurist, Louis D. Brandeis warned, "Experience teaches us to be most on our guard to protect liberty when the government's *purposes* are beneficent".

In the instant judgment, it is said, "But as we have seen, it (the amended Chapter IX) has statutory sanction", which still leaves unresolved the question again here presented. The right of congress to lay taxes on incomes has not only statutory but constitutional sanction, despite which fact the right does not reach so far as to permit congress to deprive petitioner of any interest payable under the bonds at bar by means of a federal tax, notwithstanding the broad language in the 16th Amendment. (30 Ops. 352, Jan. 31, 1914, 38 Ops. 563, Feb. 1, 1937 by U. S. Attorney General.)

Nothing said in the *Bekins* case (304 U. S. 27) expressly reversed the immunity principle decided in the *Ashton* judgment, as follows:

"The difficulties arising out of our dual form of government, and the opportunities for differing opinions concerning the relative rights of the state and national governments are many; but for a very long time this Court has adhered steadfastly to the doctrine that the taxing power of Congress does not extend to the States or their political subdivisions. The same basic reasoning which leads to that conclusion, we think, requires like limitation upon the power which springs from the bankruptcy clause."

No federal right is here threatened, if petitioner prevails, because the substantive rights of both the RFC and petitioner are of such character as to make them fiscal affairs within the sovereign power of the state exclusively, governed by the constitution and laws of the state as construed by the state Courts, and both equally secured against impairment by the contract clause in the federal constitution. Neither the claim of the RFC (R. 12), nor of petitioner (R. 161), is any more within the power of the federal government to "scale down", than to "add to", because of explicit inhibitions in the federal and state constitutions.

It would seem to be no more inconsistent with constitutional principles if California had, by simple statute, attempted to allow its citizens to be freed from paying lawful federal import duties, irrespective of federal law, than to permit feudal forces to escape

paying the direct *ad valorem* land taxes as required by state law and decisions, and keep the land in violation of law. The sphere of federal sovereignty can not be enlarged by the "consent" of the creditors of a state, or its taxing agency, no matter how greatly in the "majority" the willing creditors may be. Neither can the federal sphere be enlarged by the "consent or submission" of a state, but only by amending the constitution, in the manner therein provided. No state law or decision authorizes respondent to fail, refuse or neglect to levy and collect the direct *ad valorem* land taxes annually, required by the constitution and laws in effect, when petitioner's bonds were issued, which laws are still in full force and effect, as Chapter 368, Statutes 1943. These state taxing laws are not within the sphere of the sovereignty of the federal government, because their execution involves no federal right. While there is no contract relationship between private holders of land titles, as taxpayers and the state (*Wood v. Lovett*, 313 U. S. 362), there is a contract relationship between the state, or its taxing agencies and their bondholders as fully as with an investor in tax-delinquency deeds. It was because of this principle that this Court reversed the judgment announced by the Arkansas Supreme Court, in *Wood v. Lovett*, supra, despite the argument in that case that state decisions are supreme. Here, the tables are turned. The rights of petitioner have been fully construed and protected

by the California Supreme Court, in the cases heretofore cited, and the property rights of the RFC are equally governed by the same state laws and decisions, from which state law the power of respondent to make contracts with the RFC or others is derived and limited. The so-called state consent (Chapter 72, Statute 1939) is "a subsequent exertion of the legislative power", such as was prohibited by this Court in *Cross Lake Club v. La.*, 224 U. S. 632, 638-39, and in *Wood v. Lovett*, *supra*, by the contract clause.

The judgment, in construing the 1934 contract between the RFC and respondent as one that required or even contemplated "all holders agreed to the refinancing program", is a complete misconception of the facts. That contract was executed by the RFC under the provisions of Section 36, Public No. 78, 73rd Congress, which statute permitted the RFC to disburse such loans only *after* it "has been satisfied that an agreement has been entered into between the applicant and holders of its outstanding bonds or other obligations under which the *applicant* will be able to purchase or refund all *or a major portion* of such bonds * * * at a price determined by the corporation to be reasonable * * * ." It is this statute which measures the scope of the loaning power delegated to the RFC. It does not permit the RFC to buy the bonds to be refunded and hold them as owner, nor to do indirectly what the RFC cannot

directly do. The fact that the loan contract was executed and that the RFC disbursed its funds in 1934 (R. 86, 87), three years before 11 U. S. C. 401-403 (Chapter IX) was enacted, is not only *prima facie* that this 1934 contract was executed only after the RFC was "satisfied" that respondent had agreements with a sufficient "portion" of the holders of original 6% bonds, or else the RFC was not permitted to disburse the loan proceeds, when it did. When the original holders accepted the "price determined by the RFC to be reasonable" for their bonds, in 1934, there was no federal statute, such as forms the base of the instant proceeding. (11 U. S. C. 401-403.) Hence the opinion of this Court "that creditors owning not less than 92% of the bonds had accepted the plan and consented to filing the petition" is wholly unsupported, because it was the RFC and not the original bondholders who signed the so-called consent (R. 12) to this proceeding, three years after the RFC loan was disbursed, and after the 92% had accepted the RFC figure in full settlement. Also respondent did not deny the point raised in the petition at pages 7 and 8 that the 1934 contract entitles the RFC to 4% refunding bonds, and to get no more or less, "regardless of the outcome of this proceeding". The RFC consent is carefully worded, and makes no claim that the RFC is the "owner" of the \$447,000 bonds it "now holds". If such an artfully worded "consent" had been filed by any ordinary bankers, would

it have met the "good faith" test? In any event, the above establishes that the RFC loan of 1934 had no requirement in it that "all holders" sell, at the RFC figure, nor any requirement or condition in it, about any "plan of composition", hence, is not the opinion of this Court that "RFC has ventured the capital necessary to effectuate the plan of composition" erroneous? Where is anything in the record, or elsewhere to support the view expressed by the Court that there is any condition in, or even any reference to "a plan of composition" in the contract of 1934? But, even if there had been such a provision in this 1934 contract, how could it be validly given an effect which would impair the claim of petitioner (R. 161-163) which, under the rule of law again affirmed by this Court in *Huddleson v. Dwyer*, 322 U. S. 232, is governed by state law and decisions? It does not lie within the power delegated to congress to "interfere" with state law and decisions, if such action would benefit those who loaned money to a state, or to its local taxing agencies, because that would operate to increase the direct *ad valorem* taxes permitted under state law. The instant proceeding, insofar as it adversely affects the claim of petitioner, is not authorized by any valid law, and its sole force and effect, if it stand, will be to free private holders of land titles from direct *ad valorem* taxes mandatory under applicable state law and decisions, and to give them an unearned increment at the sole ex-

pense of petitioner by the amount of his claim, disallowed.

The cases cited in the petition, and in the brief (Appendix III, IV) clearly and unequivocally sustain this view of the rights and duties involved.

With regard to the remark of this Court, that "The alternative would be to abandon this type of refinancing", it is respectfully suggested that since the judgment in the *Faitoute v. Asbury Park* case, 316 U. S. 502, the way has been cleared for the states themselves to put their own houses in order, without shifting the job to Congress, or to its Courts, and Statutes designed to do the job were enacted by the California Legislature in 1937 (Chap. 24, Stat. 1937) which have not been repealed. This statute was quickly passed, after the *Ashton* case, but it was not used after the amended Chapter IX was held "not unconstitutional" in the *Bekins* case, 304 U. S. 27, which case reached this Court on a simple demurrer, and presented no questions, as an actual controversy, as here. The rapid abdication by the States from their duties, not only with regard to properly looking after their own local units of government, but also in failing to levy and collect a fairer share of their own expenses, and the resultant pressure for bigger and better subsidies and handouts from the federal treasury to meet the costs of education, roads, water supplies, etc., traditionally state affairs, is evidenced by examining the total federal, state and local taxes collected in this state, 1934.

to 1944. The study reveals that whereas about 50% of all taxes (federal, state and local) in 1934, were raised as direct *ad valorem* taxes by the state, on "local property", a steady and rapid shift in percentages occurred each year thereafter, until in 1944 less than 8% of the total taxes collected were derived from such direct taxes on "local property". An inquiry into the record in other states, might suggest the major cause of the present reconversion problems. The total of taxes being collected on incomes, and on the fruit of man's work, is depriving the producers of incentive, tending to lessen production, and increase the cost of things which the consumer buys. The only known antidote for this trend, is for government to increase taxes on land values or economic rent, which are not the same as taxes on land. They are taxes only on the private holders of a special privilege, the holding of sites or locations enjoying the advantages of public services and advantages (such as a dependable water supply for irrigation and domestic purposes acquired by respondent with money loaned by petitioner), the possession of which gives the title holder, as such, but not the land user, the power of privately appropriating an unearned increment, measured by the net economic rent, after taxes. What a tax on land values takes, therefore, is only part of what the user of land is, or would be required by the title holder to pay, as rent for the privilege of using that location, for a farm, buildings, shop, mine or home. It thus

never falls on the user of land, as such, never increases production costs, and never adds to prices. This is the only species of tax respondent is authorized to levy and collect. The economic effect of this taxation was described in 1911 by the Modesto Irrigation District, as follows:

"As a result of the change in taxation (authorized in Stat. 1909, p. 461), many of the large ranches have been cut up and sold in small tracts. The newcomers are cultivating their farms intensively. The new system of taxation, in collecting all of the taxes from the value of the land, has brought prosperity. Farmers are now encouraged to improve their property. Industry and thrift are not punished by increase in taxes. In the Modesto Irrigation District the man who builds a house or barn will not have his irrigation tax increased. He will pay no more than his neighbor who allows weeds to grow on his land."

Thus, it is certain, that the sole interest standing to gain, in this proceeding, is not the RFC nor respondent, but only the speculator in land titles, wishing to hold land "as an investment", without paying the taxes required by law.

Secretary of the Interior H. L. Ickes expressed the basic problem cogently in a letter printed in the *San Francisco News*, November 12, 1945, when he said:

"It is the age-old battle over who is to cash in on the unearned increment in land values created by a public work."

William Allen White, in an editorial in his *Emporia Gazette*, August 20, 1941, wrote:

“Congress is defining its powers so broadly that it is beginning to consider the regulation of rent—rent from land. Congress surely has the power to regulate the rent that any person may appropriate. *If Congress would subject the rental value of land to its taxing power*, Congress could fix rent problems *at the source*. It could tax idle lands which produce neither guns nor butter, into coming into whatever productive capacity they have.”

This Court recently denied certiorari in the case of *Cowan v. Fallbrook*, 131 F. (2d) 513, denying a private holder of land-title, who had failed to pay the Irrigation District tax within the period of 3 years allowed, the privilege of filing a petition under Section 75 of the Bankruptcy Act, and holding that the deed conveyed to the Irrigation District, the “absolute title for all purposes”. It has long been the rule, that the lien for any unpaid irrigation tax is ahead of an earlier mortgage, or private lien of any kind. *Williams v. Cooper* (1899), 124 Cal. 666. In *Anderson-Cottonwood v. Klukkert*, 13 Cal. (2d) 191, it was held squarely that land acquired by respondent for unpaid taxes is land owned by the state, immune from taxation by any other taxing agency. That decision emerged after many years of conflicting antecedent judgments, some of which are reviewed in 23 California Law Review, March, 1935, page 264. Under the provisions

of Chapter 9, Part 6, Division 1 of the California Revenue and Taxation Code, respondent has the right to become and to continue to be the exclusive rental agency, and to collect the "rents, issues and profits", the same as the former private title holder. Stats. 1943, Ch. 368, Sec. 26301. Had respondent adhered to the law, and administered tax revested land in the manner therein provided, farm and home seekers would have an opportunity of possessing a site in this District, and without having to pay tribute to some speculator in land titles for that privilege, or at least, not as heavy a tribute as is being demanded today for choice locations, within the taxable boundaries of respondent.

The instant judgment, in holding that there is no showing of discrimination between creditors, appears to have missed the definite showing in the petition at page 4, and in the brief for petitioner, at page 8, ending with "The discrimination is clear". In the event this showing does not make it clear, respondent has paid interest and principal due to RFC in full of the claim held by RFC, and no interest whatever has been paid petitioner upon his claim since 1937. (R. 134.)

Under the rule applied in *Wright v. Coral Gables*, 137 Fed. (2d) 192, by the Fifth Circuit and sustained by this Court in 64 S. Ct. 779, by a 4 to 4 vote, the payment of \$3035.95 to petitioner in December, 1936 and January, 1937 (R. 199) constitutes a deviation

from and abandonment by respondent of the program of refinancing, begun in 1934, and presented as the "Plan of Composition" in the proceeding under the original Chapter IX against petitioner, which was dismissed October 28, 1936 upon the ground "that the Court is without jurisdiction". No appeal was taken from this judgment. (R. 88, 89.)

• If the approval of the creditors "owning not less than 92%" of the original 6% bonds is taken as the effective consent for the second proceeding, it clearly was a consent to accept 52.521 cents flat, but not 52.521 cents, plus \$3035.95 interest to petitioner. If the consent from the RFC, filed with the second petition (R. 12) is the effective consent, it contains no claim that the RFC is the owner of original 6% bonds, and hence the allegation in the petition (R. 2) "That creditors owning not less than 92% in amount of the bonds and other evidences of indebtedness of petitioner and affected by the plan of composition and debt readjustment proposed herein, have accepted such plan in writing and consented to the filing of this petition * * *" is a misrepresentation.

• Therefore, because of this \$3035.95 payment to petitioner in 1936 and 1937, he can not be properly grouped with the original 6% bondholders, who in 1934 accepted 52.521 cents as payment in full, or with the RFC, whose claim is not adversely affected by the proceeding, as required by Section 83(d), 11 USC 403(d). Nothing in the statute indicates that Congress author-

ized its Courts to group as a class, creditors who on the face value of the same bonds have gotten different equivalents, or who have antagonistic interests, as clearly exist between the RFC and petitioner.

This Court said in *Doty v. Love*, 295 U. S. 64:

"The creditors favoring reorganization, though they be 99%, have no power under the statute to impose their will on a minority. They may advise and recommend, but they are powerless to coerce."

In *Helms v. Holmes*, 129 F. (2d) 263, 266, the 4th Circuit Court said: "* * * a discharge in bankruptcy is neither a payment nor an extinguishment of debts. (Nor of taxes.) It is simply a bar to their enforcement by legal proceedings." Hence a "discharge", if effective here, restrains the collection of taxes not authorized by any law relating to bankruptcy, and prohibited by 265 Jud. Code, 28 USCA §379.

The judgment, in quoting with approval certain political speeches from 81 Cong. Rec. 6313 branding minority holders of valid obligations, "Hold-up men operating *within* the law" seems a bit paradoxical. Just how any person "operating within the law" is justly branded a "Hold-up man" by this Honorable Court, is not explained. It is not denied that the claim of petitioner (R. 161) is "within the law"; and is unpaid. Therefore, the only "Hold-up" with which he can be justly charged, is the hold up of feudal interests, which seek plunder "without the law". Unless

held in check, they have grown into a giant force in Prussia, and elsewhere during the two recent world wars, fully as destructive as the atomic bomb. Petitioner makes no apology for trying to "Hold-up" outlaws, whether operating in East Prussia or in the United States. A reading of the antecedent petitions and briefs, and petitions for a rehearing filed with this Court since 1941 by petitioner herein, will more fully explain not only the Constitutional, but the economic and sociological principles petitioner has been attempting to defend. They are the basic principles of Thomas Jefferson, Abraham Lincoln, and of this Honorable Court, and not in any respect the principles of a "Hold-up man".

What happens to the property of petitioner is of secondary importance to the principle of dual sovereignty involved in this dispute, and which the instant judgment contravenes, as clearly as though the decree of the Court below had issued under a simple federal statute springing from the tax clause. In the light of this Court's language in the *New York v. U. S.* case, *supra*, as follows, "There are, of course, State activities and State-owned property that partake of uniqueness from the point of view of inter-governmental relations. These inherently constitute a class by themselves", the instant judgment, if it stand, can only further affirm the prophecy of Mr. J. McReynolds dissenting in *Graves v. N. Y.*, 306 U. S. 466, 477, when he said: "But safely it may be said

that presently marked for destruction is the doctrine of reciprocal immunity that by recent decisions here has been so much impaired."

Wherefore, petitioner respectfully prays that the judgment be reversed, and the proceedings directed to be dismissed, and that petitioner have such other relief as to this Honorable Court may seem meet and just.

Dated, San Francisco, California,

January 25, 1946.

J. R. MASON,

Petitioner in Propria Persona.

CERTIFICATE.

I, J. R. Mason, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

Dated, San Francisco, California,
January 25, 1946.

J. R. MASON,

Petitioner in Propria Persona.

SUPREME COURT OF THE UNITED STATES.

No. 306.—OCTOBER TERM, 1945.

J. R. Mason, Petitioner, vs. Paradise Irrigation District.	} On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Cir- cuit.
--	---

[January 7, 1946.]

Mr. Justice DOUGLAS delivered the opinion of the Court.

Respondent is organized under the laws of the State of California and located in the County of Butte of that State. It experienced financial difficulties in the 1930's. It had outstanding \$476,000 principal amount of bonds bearing interest at the rate of 6 per cent. Being unable to collect taxes sufficient to service the bonds, it tried to work out a debt readjustment program. It applied for a loan from the Reconstruction Finance Corporation. A loan of \$252,500 was arranged, provided all the holders of the outstanding bonds agreed to the refinancing program. The offer to the bondholders was that they surrender their bonds for 52.521 cents on each dollar of principal, exclusive of interest—an amount which respondent deemed fair to the bondholders and to the owners of the land in the district. The holders of about 92 per cent of the principal amount of the outstanding bonds agreed. Respondent, being unable to obtain the assent of the holders of the remaining bonds, filed its petition under Ch. IX of the Bankruptcy Act late in 1937. 50 Stat. 653, 52 Stat. 939, 54 Stat. 667, 11 U. S. C. § 401. It submitted with its petition its plan of composition or debt readjustment and prayed, *inter alia*, that the plan be approved. The plan provided that the holders of the outstanding bonds be paid in cash 52.521 cents on each dollar of principal, exclusive of interest; that the cash was to be supplied from the proceeds of a loan of \$252,500 from the Reconstruction Finance Corporation; that the Reconstruction Finance Corporation was to receive new or refunding 4 per cent bonds in the principal amount of its loan, and 4 per cent on all disbursements from the date thereof until the new or refunding bonds were issued to it. The petition recited that the creditors owning not less than 92 per cent in amount of the bonds had accepted the plan and consented to

the filing of the petition.¹ It appears that the consenting bondholders had deposited their bonds under the plan; that the Reconstruction Finance Corporation did not advance the funds to respondent but, acting through a bank, purchased the bonds at the composition figure and registered the bonds in its name; that in accordance with the terms of the contract between respondent and the Reconstruction Finance Corporation, the old bonds so acquired remained obligations of respondent, were held by the Reconstruction Finance Corporation as security for its advances and are to be exchanged under the plan for 4 per cent refunding bonds. The Reconstruction Finance Corporation, as holder of about 92 per cent of the bonds, approved the plan prior to the filing of the petition under Ch. IX.

The District Court found that all of the outstanding bonds were of one and the same class,² that the requisite percentage of bondholders had approved the plan,³ that respondent was unable to meet its debts as they matured,⁴ and held that the plan was fair, equitable and for the best interests of its creditors and did not unfairly discriminate in favor of any creditor.⁵ It accordingly approved the plan.⁶

Petitioner is the owner of \$29,000 principal amount of the old bonds who opposed the plan of composition. His objections were not sustained in the District Court. The Circuit Court of Appeals likewise overruled them. 149 F. 2d 334. The case is here on a petition for a writ of certiorari which we granted because of a

¹ Sec. 403(a) requires the petition to state, *inter alia*, that "creditors of the petitioner owning not less than 51 per centum in amount of the securities affected by the plan (excluding, however, any such securities owned, held, or controlled by the petitioner), have accepted it in writing."

² Sec. 403(b) provides that "the holders of all claims regardless of the manner in which they are evidenced, which are payable without preference out of funds derived from the same source or sources shall be of one class. The holders of claims for the payment of which specific property or revenues are pledged, or which are otherwise given preference as provided by law, shall accordingly constitute a separate class or classes of creditors."

³ Sec. 403(d) provides that a plan of composition shall not be confirmed, with exceptions not material here, "until it has been accepted in writing, by or on behalf of creditors holding at least two-thirds of the aggregate amount of claims of all classes affected" by the plan, excluding "claims owned, held, or controlled by the petitioner."

⁴ Sec. 403(a) requires the petition to state that the petitioner is "insolvent or unable to meet its debts as they mature." Among the findings required by § 403(c) for confirmation of a plan is that it "complies with the provisions of this chapter."

⁵ That finding is required by § 403(e).

⁶ November, 1943.

conflict among the Circuit Courts of Appeals,⁷ limited to the question whether it was proper to approve a plan which treated petitioner differently from the Reconstruction Finance Corporation.

Petitioner argues that since he and the Reconstruction Finance Corporation were put in the same class, the rule of "equality between creditors" applicable in bankruptcy proceedings (*Clarke v. Rogers*, 228 U. S. 534, 548) required that they be treated alike. In other words, he contends that instead of being required to take 52.521 cents in cash on each dollar of principal, he should receive 4 per cent refunding bonds.

We held in *American United Mutual Life Ins. Co. v. Aron Park*, 311 U. S. 138, 147, that the principle of equality between creditors governed compositions under Ch. IX, as it did compositions under the old § 12. The fact that the Reconstruction Finance Corporation holds the vast majority of all the bonds and therefore is in a dominant position in the reorganization does not mean that it is entitled to preferred treatment. It is clear that it is not. *American United Mutual Life Ins. Co. v. Aron Park*, *supra*, p. 148. The Reconstruction Finance Corporation has not by purchasing bonds in the market acquired merely a speculative position in the plan of composition. Nor is it merely in the position of a holder of a majority of the bonds. By contract with the debtor it has underwritten the whole refinancing program. It has ventured the capital necessary to effectuate the plan of composition. It has long been recognized in reorganization law that those who put new money into the distressed enterprise may be given a participation in the reorganization plan reasonably equivalent to their contribution. *Case v. Los Angeles Lumber Products Co.*, 308 U. S. 106, 117, 121-122 and cases cited; *Ecker v. Western Pacific R. Corp.*, 318 U. S. 448, 486-487. That rule is based on practical necessities. Without the inducement new money could not be obtained.

It is said, however, that the Reconstruction Finance Corporation when it becomes the holder of bonds must be treated on the basis that it is a creditor and not an outside lender of money. It is clear that Congress intended the Reconstruction Finance Corporation to be treated in situations like the present as a creditor. Sec. 402 of the Act provides that "Any agency of the United States holding securities acquired pursuant to a contract with any petitioner under

⁷ *Texas v. Tabasco Cons. Inds. School Dist.*, 132 F. 2d 62, 133 F. 2d 196, decided by the Fifth Circuit Court of Appeals, is to be contrasted to the decision below and to *West Coast Life Ins. Co. v. Merced Irrig. Dist.*, 114 F. 2d 654, decided by the Ninth Circuit Court of Appeals and also to *Luehrmann v. Drainage Dist.*, 104 F. 2d 696, decided by the Eighth Circuit Court of Appeals.

this chapter shall be deemed a creditor in the amount of the full face value thereof." The Reconstruction Finance Corporation is such an agency. Sec. 403(j) gives securities acquired, as here, pursuant to a plan of composition prior to the filing of a petition the same recognition as any other securities.⁹ It is thus apparent that securities acquired by the Reconstruction Finance Corporation, pursuant to a plan of composition, are not extinguished, remain securities "affected by the plan",⁹ and may be computed in determining the percentage of consenting creditors necessary for the filing of a petition under Ch. IX.¹⁰ If the Act were construed as requiring the Reconstruction Finance Corporation in situations like the present to be treated as every other creditor of the same class, the fact that it had underwritten the whole refinancing program would be considered irrelevant. But as we have seen, he who furnishes new capital to a distressed enterprise has long been accorded preferred treatment. The Reconstruction Finance Corporation contributes something that Mason does not. It furnishes the underwriting which makes the refinancing possible. It gives something of value for the preferred treatment which it receives. The other security holders of the same class give nothing new. That difference warrants a difference in treatment. *Case v. Los Angeles Lumber Products Co.*, *supra*; *Ecker v. Western Pacific R. Corp.*, *supra*. The plan, of course, must be fair and equitable and it must "not discriminate unfairly" in favor of any creditor. § 403(e). A secret advantage would not meet that test. *American United Mutual Life Ins. Co. v. Avon Park*, *supra*. But here there was full disclosure to the security holders and to the court. Petitioner receives 52.521 cents on each dollar of principal amount of his bonds. The Reconstruction Finance Corporation receives new and refunding bonds in the face amount of its cash advances. It is, of course, possible that 52.521 cents in cash may not be as advantageous an offer as 52.521 cents in

⁹ Sec. 403(j) reads as follows: "The partial completion or execution of any plan of composition as outlined in any petition filed under the terms of this title by the exchange of new evidences of indebtedness under the plan for evidences of indebtedness covered by the plan; whether such partial completion or execution of such plan of composition occurred before or after the filing of said petition, shall not be construed as limiting or prohibiting the effect of this title, and the written consent of the holders of any securities outstanding, as the result of any such partial completion or execution of any plan of composition shall be included as consenting creditors to such plan of composition in determining the percentage of securities affected by such plan of composition."

⁹ For a discussion of the history of § 403(j) see *West Coast Life Ins. Co. v. Merced Irrig. Dist.*, *supra* note 7, pp. 667-668.

¹⁰ See note 1, *supra*.

new and refunding bonds. But there is no showing that it is not. Hence it is impossible for us to say that, although a difference in treatment was warranted, any discrimination in favor of the Reconstruction Finance Corporation was so great as to be unfair.

A different question arises when we come to the classification of creditors for voting on a plan of composition. Sec. 403(b) provides that there shall be put in one class holders of all claims payable without preference from the same source.¹¹ While this provision states the general rule, we said in *American United Mutual Life Ins. Co. v. Avon Park*, *supra*, p. 146, that the bankruptcy court has the power to make a different classification where inequitable results would otherwise obtain. We assume that a majority bondholder who was receiving preferred treatment under a plan by reason of his underwriting or otherwise would normally have to be put in a different class when it came to voting on the plan. But we see no reason why Congress could not provide otherwise. As we have seen, § 402 allows the Reconstruction Finance Corporation to be treated as a creditor in the amount of the full face value of the securities it acquired. By reason of § 403(j) those securities may be included in the percentage of consenting securities necessary for the filing of a petition under Chapter IX. Those provisions were inserted to make these refinancing programs possible and practical. They give statutory sanction to this particular method of refinancing. Sec. 403(d) requires approval by creditors "holding at least two-thirds of the aggregate amount of claims of all classes" affected by the plan.¹² If that is construed to mean not two-thirds of each class but two-thirds of the total amount of all claims in all classes, the separate classification of the Reconstruction Finance Corporation would make no difference in result in the present case. For all of the bonds held by it are more than two-thirds of the aggregate amount of all claims affected by the plan. Only if the Act were construed to mean that two-thirds of each class is necessary for approval of a plan would the separate classification of the Reconstruction Finance Corporation produce a different result in this case. Such a construction, however, would place the success of these refinancing programs at the mercy of the minority interests. If it were necessary in this type of case to put non-assenting bondholders in a separate class, they could block the refinancing program even though it were fair and equitable and the only feasible one which the debtor could work

¹¹ See note 2, *supra*.

¹² See note 3, *supra*.

out. In designing this legislation Congress was solicitous not only to protect the position of the Reconstruction Finance Corporation in these refinancing programs¹³ but also to give this class of debtors a workable and practical method of obtaining relief from oppressive debt burdens. That purpose would be thwarted or impeded if we gave Ch. IX a construction which placed the fate of these plans in the hands of minority, non-consenting bondholders. The aim to provide a method of forcing "recalcitrant minority creditors into agreement" (H. Rep. No. 517, 75th Cong., 1st Sess., p. 3) would be defeated. For once such a rule were announced minority bondholders would have a great nuisance value, making it worthwhile for them to lie back until they got their price.¹⁴

It is suggested that the plan might be approved without the consent of the minority if, as provided in § 403(d) "provision is made in the plan for the protection of the interests, claims, or lien of such creditors or class of creditors." Provision "for the protection" of the claims of non-assenting creditors could be made by leaving them undisturbed. But the purpose of Ch. IX is to provide taxing agencies with a method of scaling down their debt structures and reducing their debt service requirements when the need for relief is shown. If the non-assenting creditors had the option to come in under the plan or to retain their old securities, the debtor would be unable to get the relief which Ch. IX affords, or could do so only on such terms as the minority dictated. The other alternative would be to abandon this type of refinancing. But as we have seen, it has statutory sanction. It is said, however, that provision "for the protection" of the claims of non-assenting creditors could be made in ways other than leaving the claims undisturbed. If, *arguendo*, we assume that is true, we see no reason why payment in cash of the full value of the claims would not be adequate. That is permissible in connection with reorganizations under Ch. X. 52 Stat. 840, 11 U. S. C. § 616(7). It is indeed the historic method of dealing with dissenters under plans

¹³ That the Reconstruction Finance Corporation would play an important role in these refinancing programs was in the forefront when this legislation was before Congress. See H. Rep. No. 517, *supra*, p. 4; 81 Cong. Rec. 6322.

¹⁴ Congressman Sumners, Chairman of the House Judiciary Committee, stated during the debate: "The force of the bill is directed against that minority present in every effort of debtors and creditors to bring the total of amounts payable within the ability of the debtor to pay. It is the minority who try to take advantage of the general desire to settle to compel an advantage to themselves in order to remove their selfishly interposed obstruction. They are hold-up men operating within the law." 81 Cong. Rec. 6313. The same view was expressed by Senator Pepper who managed the legislation on the floor of the Senate. 81 Cong. Rec. 8543.

of reorganization. *Case v. Los Angeles Lumber Products Co., supra*, p. 121, note 15. No reason is apparent why, under our assumption, the same could not be done under Ch. IX. Yet, even in that view, the present plan was properly confirmed. For there is no showing whatsoever that the full value of Mason's claims is more than 52.521 cents on the dollar which he receives in cash. The District Court, indeed, found that the cash offer was fair and equitable and we are unable to say that that finding was not warranted.

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

Mr. Justice FRANKFURTER, dissenting.

The Court holds that the Reconstruction Finance Corporation is not to be treated as an ordinary bondholder-creditor but is entitled to preferred treatment because it acquired the bonds of the debtor as part of an arrangement which made possible financing of the plan of composition. With this I agree. But I find nothing in Chapter IX which, while permitting the R. F. C. to be considered a preferred creditor for purposes of distribution, allows it to be classified among ordinary creditors for purposes of voting. Nor do considerations of policy require that the R. F. C. be given such a two-faced character. It is suggested that if the votes of a preferred creditor in the position of the R. F. C. could not be counted with the votes of the ordinary creditors that class might not furnish the necessary two-thirds of the aggregate amount of claims of that class. It must be remembered, however, that the mere failure of a class like that of ordinary creditors, *e. g.*, those having no preferred position in the scheme for distribution, to accept a plan of composition does not prove that its resistance is improperly or unfairly recalcitrant. *Cf. American Insurance Co. v. Avon Park*, 311 U. S. 138, 148. And recognition that bondholders may exercise their statutory rights as common creditors not to assent does not, of course, make of them a separate class of non-assenting bondholders with a veto power over the plan. But, if the recalcitrancy does represent a dog-in-the-manger attitude, Chapter IX would seem to have provided for the contingency. According to § 83(d) of the Act, 50 Stat. 653, 657, 11 U. S. C. § 403(d), a plan might be approved without the otherwise necessary vote, not only where the claims of the creditors "are not affected by the plan," but also where "provision is made

in the plan for the protection of the interest, claims, or lien of such creditor or class of creditors." But, though the bankruptcy court has the power of dispensing with the need of an approving vote by a class of creditors, by protecting that class' interests, it is not available where the court has not in fact determined, as it has not in this case, that the dissent of that class was an abusive exercise of their right to veto a plan.

To give such flexible scope to § 83(d),¹ though, like other provisions of Chapter IX, it is not free from ambiguity, is the more pertinent if, as suggested, Chapter IX requires approval of two-thirds not of each class of claims but of the total amount of all claims. See Remington, Bankruptcy (1939) § 4364. On the other hand, if approval of the plan by two-thirds of each class is required, such a requirement can only mean that a group of more than one-third of any class is capable of exercising the veto power, except when § 83(d) can be invoked. In establishing these classes, creditors are not properly grouped who, on the face-value of the same bonds, get different equivalents, and are, as to the only thing that matters, not bound together by the same ties but separated by antagonistic interests. To put these groups with such antagonistic interests into the same class is to contradict the very notion of a class. Reason rejects such classification and nothing in the statute indicates that Congress intended to define a class as a group with inconsistent interests.

¹ That this is a reasonable interpretation of § 83(d) is indicated by the cumbersome but more detailed form in which the purpose of § 83(d) is explained in an earlier draft of the Act:

"(3) shall, with respect to creditors whose acceptance is not required under the provisions of subdivision (e) of this section if their interests, claims, or liens are protected in the manner provided in this clause (3), provide adequate protection for the realization by them of the value of their interests, claims, or liens, if the property or revenue affected by such interests, claims, or liens, is dealt with by the plan, either as provided in the plan, (a) by the transfer or sale of such property subject to such interests, claims, or liens, or such property shall continue to be held by the taxing district subject to such interests, claims, or liens, or (b) by a sale free of such interests, claims, or liens, at not less than a fair upset price in the transfer of such interests, claims, or liens, to the proceeds of such sale, or (c) by appraisal and payment in cash of the value of such interests, claims, or liens, or, at the objecting creditors' election, of the securities allotted to such interests, claims, or liens under the plan, if any shall be so allotted or (d) by such method as will in the opinion of the judge, under and consistent with the circumstances of the particular case equitably and fairly provide such protection: *Provided*, That if provision therefor is made in the plan, the judge may require objecting creditors to accept, in lieu of any cash payment under this subdivision such security, of any kind, in payment of their interests, claims or liens, as shall, in the opinion of the judge, upon the consummation of the plan, represent the fair and equitable shares of such creditors in the property and revenue of the taxing district available for the payment of its debts. . . . " H. R. 5267, 73rd Cong., 1st Sess. (1933) § 81(b)(3), as it appears in the Hearings on that Bill, at page 17.

